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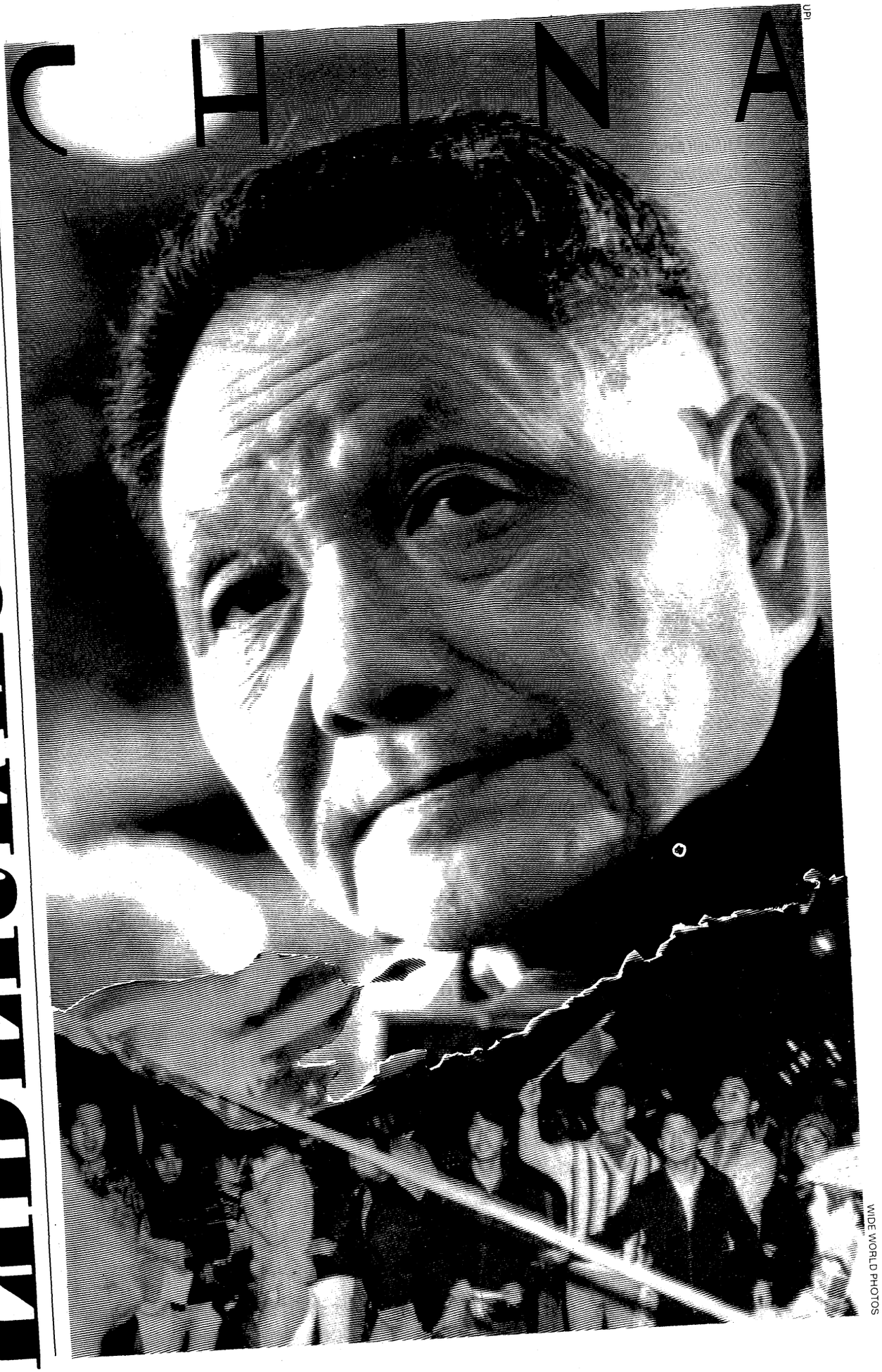

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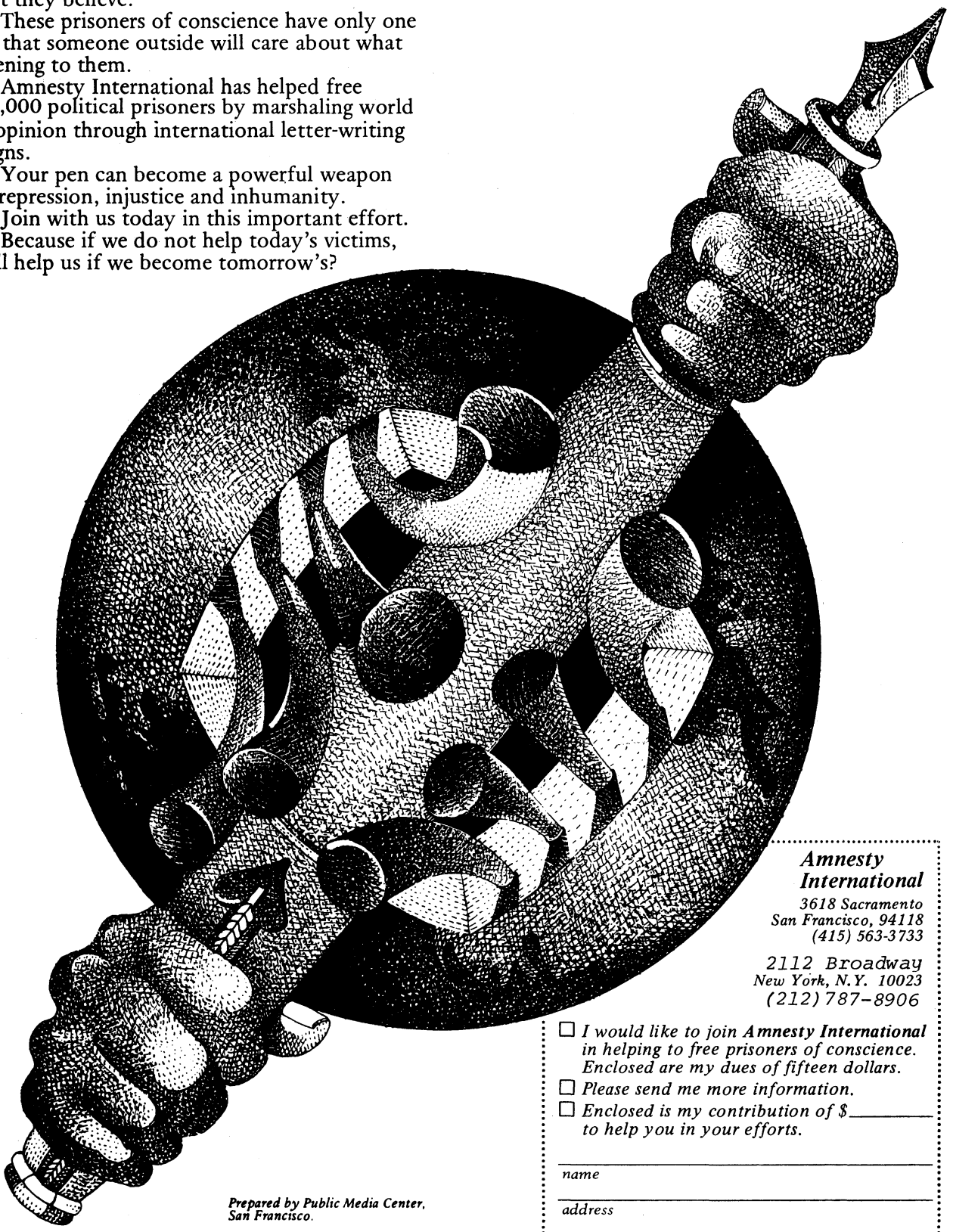

Prepared by Public Media Center, San Francisco.

Amnesty International

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THE LIBERTARIAN REVIEW

January 1979
Volume 7, No. 12

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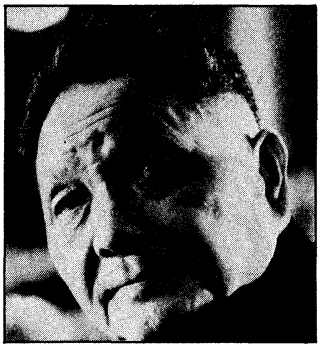

Playing the China Card

by Roy A. Childs, Jr.

"This is 'balance of power' politics played with a vengeance: with neither 'national security' nor crusading anticommunism any longer cloaking the reality of American meddling in the international arena."

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THE LIBERTARIAN EDITORIALS

The shah revisited

AS WE GO TO press, it is uncertain how long the Shah of Iran will remain even officially in power in his country. A new Premier—a Premier-designate, to be more exact—has begun the process of establishing a parliamentary government, and there is much open talk of the imminent departure of the Shah. He has spoken himself of taking a "vacation" once order has been restored to Iran—and there are indications that such order may stay restored only if the Shah never returns from his "vacation".

Whatever may have come to pass by the time you read this in the last days of January, it should be em-phasized and reemphasized that the Shah's despotic regime has been brought into its current state of worldwide disrepute, with outright revolution on the part of its victims at home, by the sheer unmitigated barbarity of its conduct of government.

Early in December, a *New York Times* reporter asked the Shah what percentage of the Iranian people he believed still supported him. "Logically," the Shah said, "all of them should, because everyone has benefited from my reign."

Really? Everyone? Try telling that to the 56 year old man Amnesty International interviewed recently who had been burned all over his body with cigarettes by the Shah's secret police after he was found with a printed statement by one of the Shah's opponents. Try telling that to any one of the 300-thousand Iranians who have been imprisoned and tortured in the past twenty years for holding the wrong political views. Are torture and imprisonment among the benefits the Shah feels everyone has derived from his reign? Are torture and imprisonment what President Carter has in mind when he sanctimoniously explains to us that the Shah is in trouble with his people for "moving too forcefully and agressively to change some of their ancient religious customs?" Are torture and imprisonment what the President is talking about when he insists that the Shah is trying to change his country in a "constructive" way, moving toward "democracy" and "social progress"?

The President has repeatedly emphasized that his administration supports the Shah, whom Amnesty International has described as having the worst human rights record of any ruler in the world. That description was first published a year ago, but it remains true today. Shortly before the end of 1978, Amnesty International revisited Iran to check on the Shah's claims that he had ended the practice of torture and loosened his restrictions on freedom of speech and the press. The human rights group concluded that nothing has changed in Iran and publicly accused the Shah of "gross hypocrisy".

The Shah's hypocrisy, however, is mild beside that of Jimmy Carter, who prates of human rights from one side of his mouth while pledging his full support to the Idi Amin of the Middle East out of the other; who pretends to believe the lie that the Shah's opponents are communists and religious fanatics, while knowing all along that they are actually freedom-loving people in pursuit of the same civil liberties all Americans enjoy. The President's behavior in the matter of Iran has been a national disgrace, and the sooner it is widely acknowledged as such, and something is done to change such sorry policies, the better. —JR

Uncle Sam: accomplice in crime

THE PEOPLE AND MEDIA of the United States have reacted strangely to the Iranian revolution. Many seem to view the political eruption there as a causeless misfortune, like an earthquake or some "act of God." The Iranian people must find this bitterly ironic. For if anyone is responsible for "destabilizing" Iran, it is Uncle Sam.

Why should Americans be surprised about the Shah's total lack of support among the people of Iran? The Shah was never elected—our own government installed him into power through a coup. In 1953, $100,000 in CIA funds and several agents ousted elected Prime minister Mohammed Mossadegh and reinstalled the Shah's throne. Since then, we have built up the Shah's regime as a military power—not because people in Iran wanted or needed billions of dollars in arms, but because the Shah was *our man* in the Middle East, providing influence in OPEC and a military ally on Russia's border.

We should not be surprised when Iranian crowds, pursued by gun and club-wielding Iranian police, storm the U.S. embassy. We, the United States taxpayers, have armed those police and paid for their training. As the insurrection in Iran mounted in intensity, the U.S. provided anti-riot gear, tear gas, and training in "crowd control" to the Shah's minions.

We should not be surprised at the massive starvation and poverty in Iran; we helped to

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create it. Our foreign policy saw to it that all of Iran's oil money would be controlled by the government, and thus spent on arms and military services instead of consumer goods. The economy of Iran is staggeringly militarized. In 1978, the U.S. Defense Department sponsored foreign military sales of $13.5 billion to all nations. Iran *alone* accounted for $2.6 billion of that total, or nearly 20%. In the past seven years, Iran has purchased *$20 billion* in arms from us. Since Iran does not have the trained technicians to operate all the stuff, each shipment of hardware is accompanied by hundreds of U.S. technicians and trainers. Iranian pilots crash the expensive Phantom jets at the rate of two every month—necessitating even more arms purchases to make up the losses. All told, there are 20,000 American technicians involved in the installation of defense technology, and in 1975, according to the *Village Voice*, each technician cost Iran's treasury $9,000 per man *per month*. Twenty-three years ago Iranian agriculture exceeded their needs and enabled them to be food exporters. Today, 93% of their food products are imported. Thanks to our help, the Shah's military gluttony has truly gutted the country.

The crisis in Iran is not somebody else's problem. As U.S. citizens, it is *our* problem. It is our tax money and our government's foreign policy that is fueling the problem. And if the waste, oppression and slaughter is to end, we in America will have to play a major role in stopping it.

—MM

Oil, Iran, and American foreign policy

AYATOLLAH RUHOLLAH Khomeini has given the American people a valuable lesson in foreign policy, if only they will listen to him. The Ayatollah is the exiled leader of Iran's Moslems and an outspoken opponent of the Shah of Iran. In the recent turmoil in that beleagured country, he has played a key role, not because he seeks to rule Iran—from all accounts he does not—but rather because it increasingly appears that no other regime can survive without his support. And that gives the Ayatollah considerable clout.

One of the reasons this concerns the American government is best expressed in a *New York Times* article of December 14, 1978, by Jonathan Kandell: "Iran's Exile Leader Warns West on Oil." The article begins by saying that

> In a warning aimed at President Carter's support for the Shah, the Ayatollah Ruhollah Rhomeini said that the United States and other countries risked being cut off from Iranian oil if the religious-led opposition movement reached power.
>
> "I have warned foreign heads of state that, from now on, any head of state who supports the Shah will be deprived of Iranian oil and all treaties with his country will be considered annulled," the 78-year-old Ayatollah . . . said in a statement issued from his residence outside Paris.

Now, as any observer of the drama in Iran—and indeed, of all American foreign policy—knows, one of the main rationalizations of American intervention in Iran, an intervention which stretches back for decades and has found itself in support of coups, bloody suppression of dissent, CIA covert operations and billions of dollars in payoffs, is that it is supposedly necessary to secure American access to Iranian oil. Not only is this alleged to be necessary for the United States, which admittedly obtains only about five percent of its oil from Iran, but also for America's "allies," including Israel, South Africa, Japan and Western Europe. Moreover, this is only part of a wider rationalization, which holds that the United States must pursue a foreign policy of global interventionism in order to secure guaranteed access to raw materials. This is one of the reasons we are supposed to support overt as well as covert operations designed to prop up unpopular, tyrannical regimes, supposedly producing "stability," so that we can get the raw materials—oil in this case—that we need for American prosperity. That is the reason for much of American intervention not only in the Middle East—an intervention going back several decades—but in Africa and elsewhere as well.

Now the Ayatollah Ruhollah Khomeini is telling us that all this doesn't work. Our continual support for the Shah has subsidized and propped up the Shah's oppression of his political opponents, and has, by promoting a false and illusory "stability," only postponed the day of reckoning. Now that the Shah is tottering, and instability in Iran has reached crisis proportions,

Feiffer
THIS JUST IN THE SHAH OF IRAN IS A NICE MAN.
THE SHAH OF IRAN IS TOO NICE A MAN.
THE SHAH OF IRAN HAS TRIED TO MODERNIZE AND LIBERALIZE HIS COUNTRY TOO FAST.
CURRENTLY A MIX OF STUDENTS CONSERVATIVES, COMMUNISTS AND HUMAN RIGHTS BIGOTS ARE CONSPIRING TO LOSE THE WEST THE BEST FRIEND IT HAS ON RUSSIA'S BORDER
IF THE SHAH GOES, IRAN GOES, OIL IMPORTS GO, SAUDI ARABIA IS THREATENED, THE PERSIAN GULF IS IN DANGER, THE RUSSIANS ADVANCE!
THIS REPORT HAS COME TO YOU FROM THE PRE-VIETNAM NEWS SERVICE.
FIELD NEWSPAPER SYNDICATE 1978

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the American people must face the fact that it is American interventionism in Iranian affairs which has helped to produce this sorry state. Iranian oil production has been nearly completely halted by strikes and violence, and the new (temporary?) head of the Iranian civil government, Shahpur Bakhtiar —whose longevity depends

Fred Silverman
and Edwin Newman of NBC

at least in part on not being opposed by the Ayatollah—has indicated that even after Iranian production is restored, his new government will probably not sell oil to Israel and South Africa, as Iran did before strikes shut off oil exports.

Once again, American intervention in the affairs of other countries—just like intervention into domestic social and economic life—produces the opposite of its alleged intentions. We intervened to secure access to oil, and to do that we sponsored a coup, supported an oppressive, tyrannical, corrupt ruler, and helped clamp the lid on Iran while the opposition built up tacit support among victimized Iranians. Instability and revolution eventually broke out, and the opposition movements are now naturally blaming the Americans for the oppression, corruption and torture under the Shah's regime, threatening to cut off access to oil for the U.S. or those of its allies who have also lent support to the Shah. Their outrage at the U.S. government and its bipartisan foreign policy is altogether justified, and their threatened punishment an act which at least symbolically has more than an element of poetic justice to it.

The continual outrages of an interventionist foreign policy—whose overt operations are carried out by a bloated military (advisors, aid, bases and weapons) and whose covert operations are carried out by the international crimes of the CIA—must be brought to an end. When the U.S. government intervenes to fight communism, the result is nearly always further communist victories. When the U.S. government intervenes to secure access to raw materials, the result similarly is instability in access to those very substances, whether oil or anything else. Current crises in foreign policy are caused more often than not by *past* interventions. This is a lesson which the American people must learn. They must turn away from interventionism, and seek out a foreign policy of determined noninterventionism, of disengagement from all political and military meddling, a strategic withdrawal from alliances and "world obligations," a move toward an isolationist foreign policy.

But how will we obtain those needed raw materials? It is a sign of how far we have moved in the direction of total state control over American economic life that such a question even needs to be asked. We should *buy* the needed oil and other materials. Businessmen ought to be free to make whatever arrangements they can to obtain needed materials from other countries, at their own expense, at their own risk, and without hindering them by tying their every business deal into a confused and corrupt foreign policy of the American state. *No* monolithic, manipulative, half-baked scheme ought to be imposed on them, attempting to use businessmen as tools of American foreign policy. There ought to be *no* government loans for sales or purchases of American or other countries' commodities; there ought to be *no* restrictions on trade; there ought to be *no* government guarantees of foreign investments or of international business deals; there ought to be *no* "most favored nation" status, nor any government deals with other nations involving the purchase of American commodities. There ought to be *free trade,* at least on the American side (which is all we can influence: but let us call for complete, total international free trade anyway), and an end to continual manipulation of international trade by the American government.

But economics is not the only consideration: there are humanitarian concerns as well. For decades now, American foreign policy has been responsible for terror and oppression, torture and slaughter, tyranny and war. We have been making other people pay the horrible cost of our foreign policy, a cost to be calculated in lives and in bloodshed and in victims scattered across the globe. It is time all that came to an end. —RAC

Where the yellow went

SIXTY-FIVE YEARS AGO, when most Americans got their news from newspapers, H.L. Mencken published an essay in *The Atlantic Monthly* in which he denounced American newspaper reporting as an unreliable combination of ignorance, misinformation and outright lies, concocted, not to inform the public, but to sell newspapers and avoid offending advertisers. Every newspaper, Mencken said, was much more interested in a sensational story than in the truth. And Mencken wasn't alone in his criticism. The term "yellow journalism" was born at the turn of this century to describe publishers like William Randolph Hearst, who were more drawn to scandal-mongering than to news reporting.

Today, most Americans get their news from TV. And, in some quarters, it has become fashionable to complain about the ignorance, misinformation and outright lies which pass for news on the tube, and to describe TV news executives as much more interested in ratings and commercial dollars than in truth. TV critics like Edith Efron and Ron Powers have

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blasted broadcast journalists in full-length books, and Hollywood has taken a feature length potshot at TV news in the award winning film *Network*.

Probably the most telling portrayal in that film was that of the network newsman, Howard Beal, who threatened to commit suicide on the air and screamed into the camera that he was mad as hell and wasn't going to take it any more—unless perhaps it was the role played by Faye Dunaway as the tasteless network executive interested only in ratings. A great many people felt that both characters were overdrawn, exaggerated, fundamentally unrealistic. But they seem to have walked right off the screen in the past few months, disguised as Edwin Newman and Fred Silverman of NBC.

Fred Silverman is the man responsible for the yellow, showbiz, broadcast journalism which has made ABC the biggest network in the country. And within only one month of Silverman's switching to NBC last summer, it was obvious to anyone where the yellow went. Edwin Newman's July 20th documentary, "I Want It All Now", presented such a sensationalized, vulgarized, and inaccurate picture of life in Marin County, California that NBC News was officially censured five months later by the National News Council, which commited one of the great understatements of the year by calling the program "misleading and journalistically flawed".

Newman's next documentary for NBC, "Reading, Writing, and Reefer", which aired December 10, was apparently designed to appeal to the worst fears of the millions of Americans who have been deliberately and systematically kept ignorant of the facts about marijuana so that a costly, cruel, and implicitly totalitarian drug enforcement apparatus may be kept in business.

LR will take a closer look at "Reading, Writing, and Reefer" next month. Suffice it to say now that while it may seem odd for a reporter like Edwin Newman, who obviously likes to think of himself as an intellectual, should lend his name to a rehash of the old "reefer madness" type of propaganda. But it ceases to seem odd once you remember the facts about journalism. It *is*, most of it, showbusiness: sensationalism for the sake of attracting attention. And it is not to be trusted. —JR

Guest Editorial: The press victorious?

DESPITE ITS SELF-effacing and self-promoted image as the world's bastion of individual freedom and liberty, the U.S. government has frequently and freely stripped its citizens of civil liberties supposedly guaranteed by the Constitution. Presidents from Adams to Lincoln to Roosevelt to Nixon have either by law, by fiat, or by secret decree suspended the "inalienable" rights not only of their opponents, but also of American citizens as a whole.

Over the past decade, the Supreme Court has been steadily eroding away the constitutional protection against searches and seizures of third parties—individuals not involved in crimes, and not in possession of tools or proceeds of a crime. The culmination of this judicial assault was the Supreme Court's decision last year in the *Zurcher* v. *Stanford Daily* case. (See "Raiding the Newsroom," July 1978 *LR*.) By the margin of five-to-four (with Justice Byron White joining the four Nixon appointees in the majority), the Court upheld the Santa Clara County (California) District Attorney's Office's use of a search warrant, rather than a subpoena, in its effort to obtain photographs of a 1971 demonstration in which several policemen were injured—photographs which never existed. This was the first known incidence of a police search of a newspaper office in this country, and was soon followed by nearly a dozen other searches of media offices in a variety of cases.

Both the incident itself and the Court's decision aroused the ire of the nation's press—which had been placed by the Court at the tender mercies of political hacks appointed to local judgeships as their reward for years of faithful party service. It was a distinct minority of the media which noted the dire threat the *Zurcher* decision posed for the rest of our citizens: Not only was the press now subject to unannounced search, without having part of or accessory to a crime, but so were doctors, lawyers, clergymen, and *any* citizen who *might* have a document, recording, or photograph that could *possibly* serve as evidence in a *potential* criminal case.

Ever the political animal, President Carter has responded to the media's anguished cry of "foul" in a most political manner. On December 12, the Administration proposed to Congress a law that would require law enforcement officers to use subpoenas—which can be contested in court—rather than search warrants—which can not be fought prior to the search—in any effort to obtain documentary evidence relating to a crime from reporters, free-lance writers, publishers, scholars, or anyone else who had obtained the documents for publication. The Administration bill was a compromise among 13 such measures submitted by senators and representatives themselves, which ranged from protection for the press only to prohibition of searches of all innocent third parties. The only exceptions allowed under Carter's proposal are when the possessor of the document is himself a criminal suspect, or when a life is in danger.

Of course, the Administration bill ignores the libertarian principle which underlies this entire question: Coerced speech can never be free speech. Using force to make someone speak is as reprehensible as is using force to stop that person from speaking. Beyond the fact that this piece of legislation formally declares the ordinary citizen's privacy to be unprotected, beyond the pale, the Administration bill forthrightly endorses the principle that speech may indeed be coerced, and only establishes procedural controls on *how* it may be coerced.

Nothing more than such a totalitarian tenet can be expected from any state; but the press itself has been little better on this issue, nervously protective of its own, limited prerequisites. The bulwark of corporate statism, *The New York Times*, paid brief lip service to the concept that protection from surprise searches should exist for all innocent citizens in its editorial of December 12. But the paper was more concerned with such fundamental questions as whether a reporter who received a leaked document in violation of national security laws would be considered a "criminal," and thus subject to a search.

The Carter Administration's proposal is neither "a welcome first step toward shoring up some First Amendment freedoms," as the *Times* editorialized, nor a "very good working first draft," as proclaimed by John Shattuck, Washington director of the American Civil Liberties Union. It is, however, what Washington columnist Marianne Means called "a political and legal victory for the press."

At the expense of everyone else.

—Marshall E. Schwartz

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OPENING SHOTS

BILL BIRMINGHAM

"FIFTY THOUsand children in Hanoi and Haiphong," says *Village Voice* columnist Alexander Cockburn, "are, it seems, permanently deaf as a result of the Christmas bombing of 1972."

"General William Westmoreland, former commander of American forces in Vietnam, is receiving friendly invitations to speak about the Vietnam War on many college campuses," says *US News and World Report*.

OSHA has seen the light, or so it claims. It promises to "simplify" some 900 new regulations on such things as the shape of toilet seats. In addition, Assistant Labor Secretary Eulah Bingham, a ranking OSHAcrat, accuses the agency of "the sin of omission. We were so concerned with health that maybe we were at fault for not presenting more data on cost effectiveness. We will be doing so from now on." Does this mean more lenient regulation? "It means," quoth Dr. Bingham, "we will have to be more persuasive about the value of what we are doing."

The nominating committee for the 1979 Nobel Prize in economics might take note of Libyan strongman Muammar el-Qaddafi, who broke new ground in the science with his declaration: "Trade is an exploitation phenomenon. The merchant sector is a consumer, not a productive, sector. Therefore, the abolition of free trade is imperative." Unlike Paul Samuelson, Professor Qaddafi can implement his discovery all by himself; the merchants are to be replaced with "cooperatives and public supermarkets", the better to build Qaddafi's "new socialist society." The two major groups rioting in the streets in Tehran against the Shah of Iran, by the way, were the students—and the street merchants.

Madalyn Murray O'Hair, who once tried to enjoin NASA from reading the Bible from outer space, is now attempting to halt the production of the new Susan B. Anthony one dollar coin. Plastering the logo "In God We Trust" on the Anthony dollar, she charges, "is an affront to the memory of this great American atheist", whose diary is supposedly laced with anti-religious rhetoric. Want to bet that our God-fearing Treasury Department won't bounce the infidel Anthony in favor of, say, Aimee Semple MacPherson? You watch.

The sainted Alan Greenspan, you will recall, caught no end of flak for his immortal observation that, as a class, it was the stockbrokers who had suffered the most from the then-current recession. In like manner, one Joseph J. Minarik, of the Brookings Institution, declared that (in the words of Leonard Silk): "The wealthy . . . are hurt by inflation more than any other group in society, while the poor hold their own, more or less. . . . Upper-income families lose real income sharply when inflation increases because of greater income taxes, lagging corporate retained earnings and, most of all, the drop in the market value of their interest-bearing securities." If the rate of inflation increases by two percentage points, Minarik finds, a family with an annual income of $100,000 loses 10% of their real income, and one with an income of $200,000 suffers a 17% loss. A family in the $1 million-plus class loses an average of over five percent of its real income. (The very rich, it seems, are more adept at tax-sheltering than the modestly rich.) And while coupon-clippers suffer, "wages and salaries stay reasonably close to prices as they rise." But Minarik may escape the wrath that was visited upon Greenspan. After all, since soaking the rich is generally conceded to be progressive, the liberals can now embrace inflation—now over 10% a year, and rising—with a glad heart. The golden age of social justice.

Pravda has the explanation for the Jonestown murder-suicides: "What has happened in Guyana is one more page illustrating the tragic fate of American dissidents who could not find a place for themselves in America, just as they could not find it in any other country." (*Sovietskaya Kultura*, for its part, called it a symptom of the "grave illness" of American society, caused by the pervasive influence of capitalist monopolies.) Such claptrap, of course, is in stark contrast to the sober and responsible coverage provided by the American media. One television newscaster, for example, went to Manhattan's Hare Krishna temple to ask its president: "Do you hold suicide drills?" "The follow-up question," said the *New York Times*, "was: "'Well, if you did, how often would you practice them?'"

Someone recently noticed that the Hyperion Sewage Treatment Plant in West Los Angeles had a sign out front that read: "Pollution Control Project / Environmental Protection for Fairfax County / New $3 Million Waste Treatment Works." Since Fairfax County is a suburb of Washington, could Los Angeles by taking in federal sewage? Yes, as it happens; the sign painter "had been

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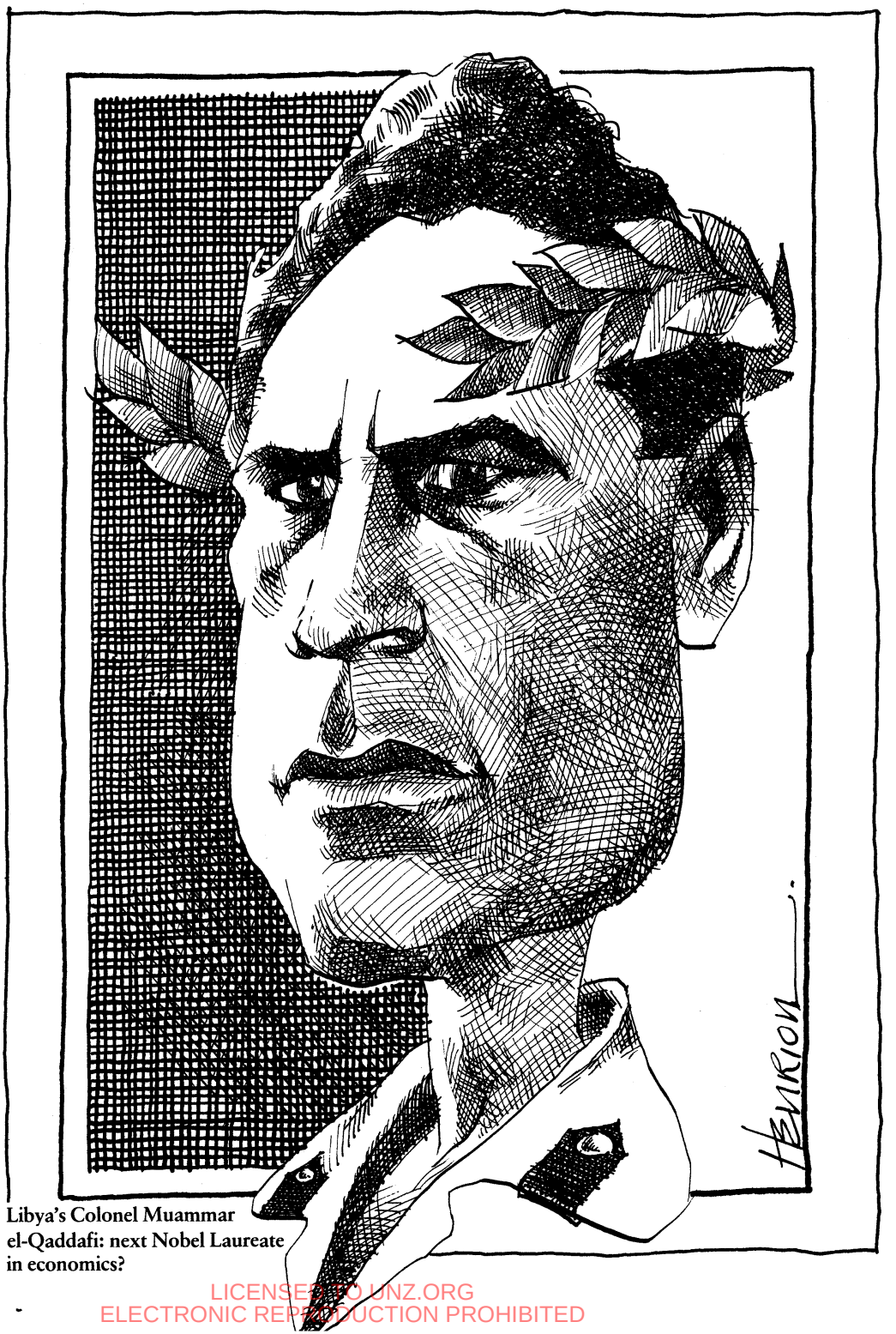
given a copy of the Environmental Protection Agency's regulations to use as a guide," the *Los Angeles Times* reported, and "he copied the example in the book word for word."

On December 4, Israeli military authorities razed the homes of two West Bank Arabs accused of terrorism. In at least one case, that of Mr. Akram Hamid of the village of Silwad, the house did not even belong to the accused; but to his father, with whom he lived. Please notice the word "accused"; neither of the two Arabs had been convicted in any court. But "it has nothing to do with conviction," according to an Israeli spokesman quoted by the *San Francisco Chronicle* (December 5, 1978). "This is an administrative act. It's a measure that has been taken hundreds of times in the past." Now back to Camp David.

"Female rebellion against male sexual authority is now a reality throughout this country. The men, meeting rebellion with an escalation of terror, hang pictures of maimed female bodies in every public place." Such was the restrained and thoughtful contribution of Ms. Andrea Dworkin at a New York University colloquium on pornography December 2. The colloquium, "Obscenity: Degradation of Women Versus Right of Free Speech", was supposed to study "the question of how to mitigate the adverse effects of pornography on society without offending the First Amendment." La Dworkin *was* restrained, compared to some of the loons who spoke; such as one Leah Fritz, a born-again *Screw* staffer, who claims that porn is on the rise because the US lost in Vietnam: "Men can't stand to lose, particularly Americans to little men. . . . The blood of women will run to pay for the insult by little men. After all, are not women little men?" There was also a Paul J. McGeady, of something called Morality in Media, Inc., who assured the audience that "obscenity is not free speech so it's not protected by the First Amendment." Happily, the audience was not nearly so deranged. About 100 of the 300 or so attending identified themselves as "First Amendment absolutists."

As Milton Friedman and other economists have long noted, the American tax system penalizes marriage. A married couple can often reduce their tax bite considerably by divorcing, "living in sin", and filing separate returns. The Supreme Court, alas, has refused to hear the appeal of Paul Mapes and Jane Bryson; a married couple who had demanded that the IRS refund the $1200 the marriage tax had cost them. The lower court had not only rejected their appeal, but asserted that "our Internal Revenue Code provides an opportunity to the young to demonstrate the depth of their unselfishness"—or their masochism—by submitting to the rapacity of the IRS. Our married readers can console themselves with that, come the ides of April.



Libya's Colonel Muammar el-Qaddafi: next Nobel Laureate in economics?

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LETTERS TO THE EDITOR

Except for Israel?

MURRAY ROTHBARD scolds Anwar Sadat (LR, Oct. '78) writing, "For the true meaning of Camp David has become increasingly clear: Egyptian President Anwar el-Sadat, in betrayal of his long-time commitments to the other Arab nations and to the Palestinian people, has made a seperate peace with Israel. What Sadat accomplished was solely in the interest of the Egyptian state—the return of Egyptian sovereignty over the Sinai, and the removal of the Zionist settlements there.... Egypt is the strongest Arab military power, and the peace treaty means that Egypt has abandoned the Arab struggle, putting another conventional war virtually out of the question for the Arab states."

Evidently, Sadat's move to a more non-interventionist foreign policy does not meet with Rothbard's approval and praise. As a result of the proposed agreement, Egypt itself will have no territorial quarrel with Israel, and, fearing no military attack from her, will pursue a defensive non-interventionist foreign policy vis a vis Israel. Yet Rothbard seems to *want* Egypt to remain in a state of war with Israel, keeping open the military option and the military pressure on Israel for the sake of goals which are *not* those of Egypt's own national self-defense. Further, he writes wistfully that the non-confrontation Arab states are not in a position effectively to intervene against Israel, but he doesn't add the comment that this is fortunate or discuss whether their financial aid for purchasing weapons constitutes interventionism.

Is non-interventionism a foreign policy Rothbard recommends *only* for and to the United States? Or does he enthusiastically recommend it to everyone else also, except in their relations with Israel?

ROBERT NOZICK
Cambridge, Massachusetts

Rothbard replies:

Robert Nozick seems to have misunderstood my article. The fact that I hold a sardonic and hostile view of the motivations of Anwar Sadat (as I do of all heads of State), does not mean that I advocate Egyptian state intervention in Palestinian affairs. To the contrary, Nozick does not seem to realize that a major thrust of my article was that the rights of the Palestinians to their homes and properties can only be secured by reliance upon themselves, and not on the Arab states.

I indeed advocate a non-interventionist foreign policy for all States. But as an American, I must concentrate on the foreign policy of the only State that I can hope to influence, that of the U.S.A. In the Middle East, U.S. foreign policy over the last thirty years has been a black record of massive intervention—economic, military, and diplomatic—on behalf of the State of Israel. When will Nozick join me in calling for an immediate cessation of such aid? Or does he advocate it enthusiastically everywhere *except* in our relations with Israel?

Capital punishment: irrational and destructive?

PROFESSOR ROTHBARD contends [LR, June 1978] that the Libertarian Party ought to take a stand on the issue of capital punishment, since the issue has, of late, been a source of widespread popular agitation. I wonder. It seems to me that there are some issues—and this is one of them—on which the Libertarian Party ought not to take a position, just because the relationship of the issue to the Party's "core" values is so obscure that calling public attention to the position could only distract attention from those core values. Rather than "making libertarianism relevant to the public" we might only end up confusing the public about what libertarianism is.

If the Libertarian Party must take a stand on the death penalty, however, there is only one stand that we can take consistent with our professed devotion to individual rights. We must stand unconditionally and unalterably opposed.

There are many reasons why partisans of individual rights must oppose capital punishment, but I should like to focus on just one. It is assumed in many discussions of capital punishment—Professor Rothbard's included—that we know for sure who the murderers are. Would that it were so. Unfortunately, our judicial procedures are not immune from error—nor could they be. Even the most judicious and thorough weighing of the evidence cannot guarantee a correct verdict. It always remains possible that the person we are proposing to execute is innocent of the crime of which he or she is accused. Were the penalty something other than death, we could at least attempt to make restitution to the innocent victim if we later discovered our error. But if the penalty is death, there can be no restitution; there can be no going back.

Thus, when we execute, we may, for all we know, be robbing an innocent person of his or her right to life. And there is no compelling reason for taking such a risk. This is not a case of killing to remove what we perceive to be an imminent threat to life and limb, for the person we are executing poses no such immediate threat. He or she is our prisoner. True enough, some good may be done by the execution: we may, for instance, purchase a few units of deterrence. But it seems to me that we, as libertarians, ought to be particularly aware that there are certain things that ought not to be done, certain "side constraints" (to use Professor Nozick's phrase) that ought not to be violated, no matter what the good that could come of violating them.

Professor Rothbard's suggestion that persons have some sort of a right to revenge strikes me as preposterous and absurd—and is, in any case, completely unsupported. A sound theory of rights would never grant to anyone such liberty to dispose of the person of another. Each person has a right to be fully compensated for in-

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jury done him or her; no person has a right to inflict a new injury in order to avenge the first. Moreover, the desire for revenge seems to me a wholly irrational and destructive desire—one that promises neither to benefit the injured party nor to undo the injury—and one that is entirely out of place in a decent and civilized society.

TONY FRESSOLA, Ph.D.
Adjunct Assistant Professor of Philosophy
C.W. Post College
Rockville Centre, New York

Rothbard replies:

Professor Fressola seems to have read some other article on capital punishment and not mine. The one *he* read stressed the importance of capital punishment as a deterrent, a criterion that I explicitly rejected; and the one he read went on in praise of the desire for revenge, a theme totally absent from my article. Oddly enough, my position in a sense is the same as Professor Fressola's: for I too wish nothing more nor less than every victim's "right to be fully compensated for injury done him". It is simply that while Fressola is silent on what that "compensation" is supposed to be, I believe that in murder cases, such full compensation entails capital punishment.

Robert Nozick: "evidently, Anwar Sadat's move to a more non-interventionist foreign policy does not meet Rothbard's approval."

Whether or not that right should be exercised is another matter. As I tried to make clear, I would leave the decision on whether or not to exercise it up to the holder of such a right, the victim of a particular crime. I personally favor the exercise of such a right because, contrary to Fressola's brusque dismissal, I see nothing wrong with either the desire for or the exercise of one's right to revenge. On the contrary, I believe that revenge is necessarily entailed by a love of justice and a desire to uphold one's rights against aggressors.

The argument from possible error, while common enough, strikes me as a curious one. For if we waited in all cases to act until we were absolutely certain of every aspect of the situation, we would never act at all, and the human race would perish. We must in all cases act on the best knowledge that we have. Nobody denies, of course, that in cases of capital punishment, we must be darned sure before we act, but here I am saying nothing new. There is, after all, a pretty good formula around: "guilty beyond a reasonable doubt."

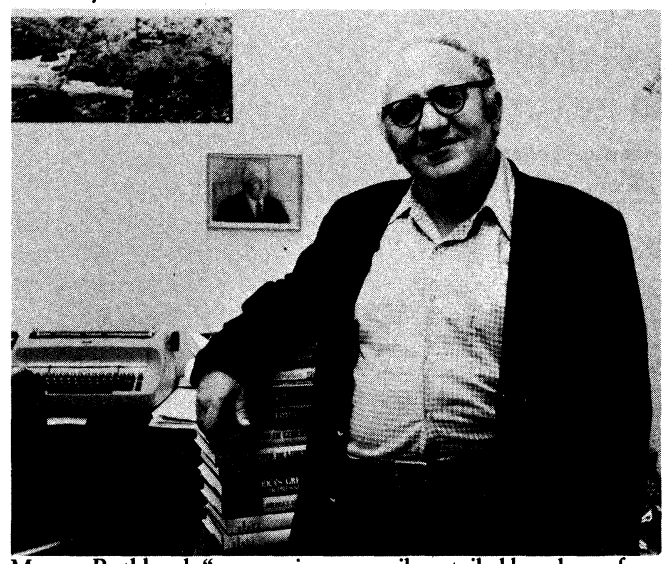
One suspects, however, that the error question is not Professor Fressola's real argument against capital punishment. For if it were, he would have no argument against capital punishment for those many murders where no sensible person would question the identity of the culprits: e.g., Jack Ruby's murder of Oswald before several million witnesses, or numerous murders committed openly by the State.

Getting in bed with the left?

I have read your editorial in the May '78 issue on Howard Jarvis and the strategy of the "anti-property tax" rebellion. Your concern that Jarvis, by allying himself with the Briggs initiative, would hurt Proposition 13 was, as the election proved, unfounded. However, it brings out an all too familiar trend among "libertarians": You argued against his support for these issues on the narrow basis that they would hurt Proposition 13 and called for the same 'coalition' tactics which is so much a part of the "left", old and new. The effect on one's integrity is obvious.

I was expecting you to criticize Jarvis for not being a libertarian, but to expect the right to respect other people's rights is absurd. The right in California has always stood for more rights for some and less for others, as is evinced by their involvement in the McCarthy hysteria of the '50s, the drive against Fair Housing, the John Birch / Goldwater subversion of the 1964 Republican convention (which made Watergate look like a hayride) and the recent Briggs Initiative.

As someone who was a member of the California Republican Assembly and had plenty of contact with the Birchers (more than I expected with that organization), I can tell you the right is organized like we used to be told the communists were.



Murray Rothbard: "revenge is necessarily entailed by a love of justice and a desire to uphold one's rights against aggressors."

From the para-military groups of the Rangers and the Minutemen to the political hybrids like the Posse Comitus, a real danger to our liberties and freedom is lurking on the right, and libertarians are insane to ally themselves with them.

NICCOLO LEO CALDARARO
California

Correction

DUE TO AN ERROR of proofreading, Henry Hazlitt was made to describe fellow economist Milton Friedman in the November, 1978 issue of LR as "a beautifully lurid writer." Mr. Hazlitt actually described Dr. Friedman as a "beautifully *lucid* writer." LR regrets this error and any embarassment it may have brought to anyone concerned. ❑

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THE PUBLIC TROUGH

Libertarians in government

BRUCE BARTLETT

POTENTIALLY one of the most exciting periods in the modern history of libertarianism will begin this month when at least two (possibly three) full-fledged, hard-core libertarians take over the duties of the offices to which they were elected in the November elections.

The first of these is Dick Randolph, who was elected to the Alaska State Legislature, not simply as a libertarian but as the candidate of the Libertarian Party. This is a victory of unprecedented proportions. For the first time in the brief history of the Libertarian Party it actually has someone holding office. In my opinion, this is a far bigger step toward achieving the ultimate legitimacy of the Libertarian Party than even Roger MacBride's famous electoral vote cast for the national Libertarian ticket in 1972.

The second libertarian elected in the November election was not elected on the Libertarian Party ticket, but is nevertheless as libertarian as anyone reading this magazine. He is Dr. Ron Paul, elected to Congress from the 22nd district in Texas on the Republican ticket.

This is Dr. Paul's second time around. He was first elected to Congress in April of 1976 when his prececessor resigned. It was a tough election for Ron. First he had to win the Republican primary against several strong challengers. Then, in the first special election, Ron finished second. But because of a third party candidate, the winner failed to get the required 50 percent of the vote. So there was another special election a short time later. This time it was Ron Paul who finished on top and went to Washington. Unfortunately, it was a short-lived victory. That November, Ron Paul and his Democratic challenger, Bob Gammage, squared off again—for the third time—and it was Gammage who won this time. But the margin was extraordinarily close: less than 100 votes out of almost 200,000 cast—the largest voter turnout in the district's history. Although voting irregularities were numerous, Gammage retained his victory against Ron Paul's congressional and court challenge.

For the past two years Ron has continued his campaign, despite a heavy work schedule as a medical doctor. For example, a newsletter he established while in Congress was continued and mailed to all his supporters. And a telephone call-in service he established to inform constituents was also continued. So in November it was Ron Paul versus Bob Gammage for the fourth, and hopefully last, time. Although Gammage received all the support his party could provide him, including a personal visit to the district by President Carter, Ron Paul was again elected to Congress by a comfortable 1,000 vote margin.

A *possible* third libertarian was also elected to Congress from Texas in November. He is Dr. Phillip Gramm of the 6th congressional district. Gramm holds a Ph.D. in economics and has been teaching economics at Texas A & M University for several years. He was elected as a Democrat.

Gramm first rose to prominence a few years ago after the Arab oil embargo. It was at this time that the nation first began to hear about the so-called energy shortage affecting the planet. In a famous article for the *Wall Street Journal* (November 30, 1973), Gramm argued persuasively that there was no general shortage of energy, just a temporary shortage caused by government policies. He noted that there had been previous energy shortages throughout history, such as during the mid-1800s when whale oil began to run out, ultimately to be replaced by petroleum. This article caused quite a stir and has made Gramm one of the leading exponents of a free market in energy ever since.

I know that Ron Paul is a

INDIANAPOLIS STAR

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sincere libertarian (I served on his congressional staff the first time around), but it is too soon to tell about Gramm. Although Gramm has written forcefully about the free market for such magazines as *Reason* and *Human Events,* I don't know where he stands on critical foreign policy and social issues. But even if he is in fact a libertarian on these issues as well, he will be hard-pressed to stay that way once he gets to Congress. Too often, libertarian-leaning men have come to Washington only to be corrupted by the system. And the most corrupting influence of all has nothing to do with lobbyists, campaign contributions, special interests, or any of the other things usually discussed. It is simply the influence that your fellow congressmen have. Call it peer-pressure or whatever; when the other members start to lean on you the pressure is almost unbearable. An example of a congressman who has been utterly ostracized by his unwillingness to go along is Larry McDonald of Georgia. Unfortunately, McDonald is not a libertarian but a conservative John Bircher. Nevertheless, one has to admire him for standing up for his principles, even if they are wrong.

The critical importance of having a few libertarians or quasi-libertarians holding any political office is that they take libertarianism out of the realm of theory and into the real world. It is a constant struggle to find ways of translating the theory into practice, and in a way that can attract political support. But it must be done. I know that Dick Randolph and Ron Paul can do it. I just hope that they are not made to carry the whole burden themselves for too long, or they will get discouraged. If a few good prospects like Phil Gramm can join their ranks then we may be well on the road to a libertarian renaissance. ❑

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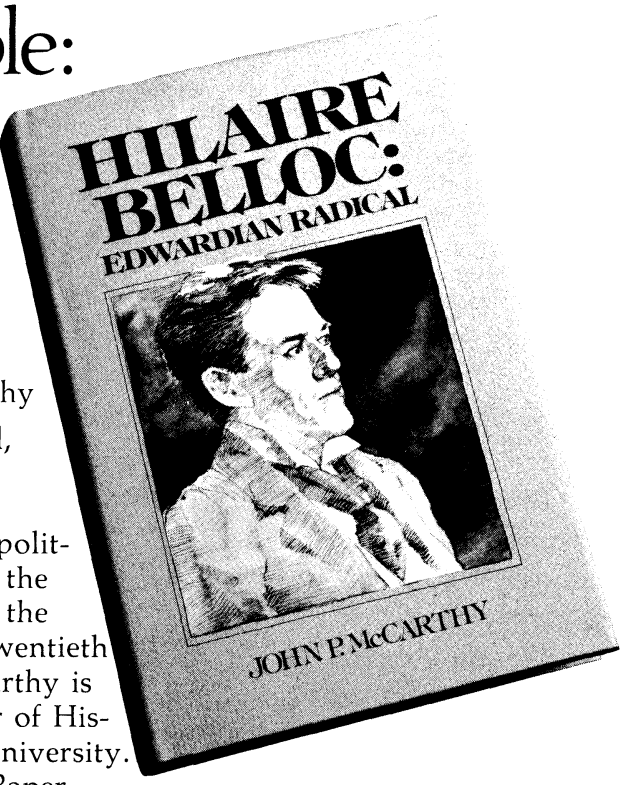

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THE PLUMB LINE

Statism, left, right and center

MURRAY N. ROTHBARD

"LEFT," "RIGHT," and "center" have increasingly become meaningless categories. Libertarians know that their creed can and does attract people from all parts of the old, obsolete ideological spectrum. As consistent adherents of individual liberty in all aspects of life, we can attract liberals by our devotion to civil liberty and a non-interventionist foreign policy, and conservatives by our adherence to property rights and the free market. But what about the *other* side of the coin? What about authoritarianism and statism across the board?

For a long while it has been clear that statists, right, left and center, have been growing more and more alike—that their common devotion to the State has transcended their minor differences in style. In the last decade, all of them have been coagulating into the center, until the differences among "responsible" conservatives, right-wing Social Democrats, neo-conservatives, and even such democratic socialists as John Kenneth Galbraith and Robert Heilbroner, have become increasingly difficult to fathom.

The common creed central to all these groupings is support for, and aggrandizement of, the American State, at home and abroad. Abroad, this means support for ever greater military budgets, for FBI and CIA terrorism, for a foreign policy of global intervention, and absolute backing for the State of Israel. Domestically there are variations, but a general agreement holds that government should not undertake more than it can achieve: in short, a continued, but more efficiently streamlined welfare state. All this is bolstered by an anti-libertarian policy on personal freedom, advancing the notion, for either religious or secular reasons, that the State is the proper vehicle for coercively imposing what these people believe to be correct moral principles.

This coalition of statists has been fusing for some years; but recently a new outburst of candor has let many cats out of the proverbial bag. It all began in the summer 1978 issue of the socialist magazine *Dissent*, edited by ex-Trotskyist Irving Howe. A lead article by the best-selling economist Robert Heilbroner says flat out that socialists should no longer try to peddle the nostrum that central planning in the socialist world of the future will be cojoined with personal freedom, with civil liberties and freedom of speech. No, says Heilbroner, socialists must face the fact that socialism will have to be authoritarian in order to enforce the dictates of central planning, *and* will have to be grounded on a "collective morality" enforced upon the public. In short, we cannot, in Heilbroner's words, have "a socialist cake with bourgeois icing," that is with the preservation of personal freedom.

An intriguing reaction to the Heilbroner piece comes from the right-wing. For years, a controversy once raged amidst the intellectual circles on the right between the "traditionalists," who made no pretense about interest in liberty or individual rights; the libertarians, who have long since abandoned the right-wing; and the "fusionists," led by the late Frank Meyer, who tried to fuse the two positions into a unified amalgam. Both the "trads" and libertarians realized early that the two positions were not only inconsistent but diametrically opposed.

In recent years, the trads have been winning out over the fusionists in the conservative camp, as the conservatives have sidled up more eagerly to Power. Now, Dale Vree, a regular columnist for *National Review*, takes the opportunity to hail the Heilbroner article and to call for a mighty right-left coalition on behalf of statism. ("Against Socialist Fusionism," *National Review*, December 8, 1978, p. 1547). He also slaps at the fusionists by pointing out that the "socialist fusionists," those trying to fuse economic collectivism with cultural individualism, necessarily suffer from the same inconsistencies as their counterparts on the right-wing, who have tried to join economic individualism with cultural collectivism.

Vree writes: "Heilbroner is also saying what many contributors to *NR* have said over the last quarter-century: you can't have both freedom and virtue. Take note, traditionalists. Despite his dissonant terminology, Heilbroner is interested in the same thing you're interested in: virtue."

But Vree's enthusiasm for the authoritarian socialist does not stop there. He is also intrigued with the Heilbroner view that a socialist culture must "foster the primacy of the collectivity" rather than the "primacy of the individual." Moreover, he is happy to applaud Heilbroner's lauding of the alleged "moral" and "spiritual" focus of socialism as against "bourgeois materialism." Vree quotes Heilbroner: "Bourgeois culture is focused on the *material achievement* of the individual. Socialist culture must focus on his or her *moral or spiritual achievement*." Vree

"A new polarization is fast taking shape. The lines are drawn with increasing clarity. Big government, coercion, statism—or individual liberty."

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then adds: "There is a traditional ring to that statement." And how! He then applauds Heilbroner's decrying capitalism because it has "no sense of 'the good'" and permits "consenting adults" to do anything they please. Reacting in horror from this picture of freedom and diversity, Vree writes: "But, Heilbroner says alluringly, because a socialist society must have a sense of 'the good,' not everything will be permitted."

To Vree, it is impossible "to have economic collectivism along with cultural individualism" or vice versa, and so he is happy, like his left-wing counterpart Heilbroner, to opt for collectivism across the board. He concludes by noting the fusion of "right-wing" and "left-wing" libertarianism, and then he calls for a counter-fusion on behalf of statism:

> Several mavericks have been busy fusing right-wing libertarianism with left-wing libertarianism (anarchism). If the writings of such different socialists as Robert Heilbroner, Christopher Lasch, Morris Janowitz, Midge Decter, and Daniel Bell are indicative of a tendency, we may see the rise of a socialist-traditionalist fusionism. One wonders if America contains any "Tory Socialists" on the right side of its aisle who will go out to embrace them.

The whopping error in that paragraph is that one doesn't have to wonder for a moment. The Buckleys, the Burnhams and their ilk have been scrambling for such an embrace for a long time—at least in practice. All that is left is the open and candid admission that this is what has been going on.

A new polarization, a new ideological spectrum, is fast taking shape. Big government, coercion, statism—or individual rights, liberty, and voluntarism, across the board, in every facet of American life. The lines are getting drawn with increasing clarity. Statism vs. liberty. Us or Them. ❑

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Mont Pelerin: 1947-1978

The Road to Libertarianism

LEONARD P. LIGGIO

The Mont Pelerin Society's 1978 activities began in Japan, where almost one hundred of the members and guests, mainly from North and South America, gathered. This extended reunion permitted the Mont Pelerinists to become much better acquainted with each other.

The Mont Pelerin meeting covered a wide range of subjects. In addition to presenting material to appear in the third volume of *Law, Legislation and Liberty*, F.A. Hayek presented a postscript on "The Three Sources of Human Values." He examined the errors of sociobiology, the evolution of self-maintaining complex structures, rules of conduct, the discipline of freedom, and the reemergence of suppressed primordial instincts; and criticized both Marx and Freud. Papers were also presented on the family and the state, evaluation of teamwork, intercultural conflicts, and regionalism versus nationalism. Interesting comments were made by Pedro Schwartz, John O'Sullivan, Peter Duignan, Stephen Mulholland, David Henderson, Alvin Rabushka, John Greenwood, and Sudha Shenoy. Especially important were the contributions of Jean Pierre Hamilius and Rhodes Boyson. M.P. Hamilius invoked libertarian principles in defense of cultural nationalism and self-determination. Boyson espoused parliamentary democracy as the best road to a free society and examined the three markets—economic, moral, and cultural—which provide non-political solutions to problems. He emphasized that the moral and cultural markets had been given by default to the advocates of the political means. He urged advocates of a free society to concentrate on the social traditions and moral sensibilities of each individual country.

Most of the participants seemed to be accustomed to investments and thus did not have any reason to make them a subject of conversation. This made them pleasurable company compared to some libertarians whose conversation revolves around purchases of silver, "controlled substances", and dried peas. And unlike some libertarians who seem more interested in how to profit from the coming inflation, the Mont Pelerinists exhibited sounder economic views and talked about how to fight inflation. This economic stability showed itself powerfully during the session on "Monetary Problems and Policies" chaired by Gottfried Haberler. The session became a debate between the monetarist position, for which Milton Friedman was the spokesman, and the Misesian position, for which the spokesman was John Exter, former vice-president of the First National City Bank of New York. Exter presented a severe challenge to the realism of the monetarist position, placing it clearly on the defensive. Friedman seemed annoyed with the membership of the society after its enthusiastic and prolonged applause for Exter's critiques of monetarism, perhaps because it indicated how much progress the Misesian monetary analysis had made as a result of the economic reality of inflation.

Friedman said that he was tired of trying to define money, that he believed government intervention in money was inevitable, and that therefore, the proper role of an economist was to advocate sensible interventions. He was enthusiastic about the tax-revolt in the United States, and advocated a constitutional amendment which would establish the rules that the monetary authority should follow. Friedman insisted that "We are doomed" if we believe that de-statizing money is the only answer. He argued that there is no way to de-statize money, and therefore that this strategy cannot prevent the destruction of our civilization. Friedman hoped that it would be possible to convince the public to pressure governments into introducing monetary stability in the face of increasing inflation and destability. Would the government obey the public? Friedman accepted George Stigler's formulation of Aaron Director's Law: the state redistributes income to those who control the state.

Donald Kemmerer noted in reply that the greatest lesson of economic history is that fiat money does not work. But this understanding has been lost, he said, due to the elimination of the study of gold from money courses. F.A. Hayek

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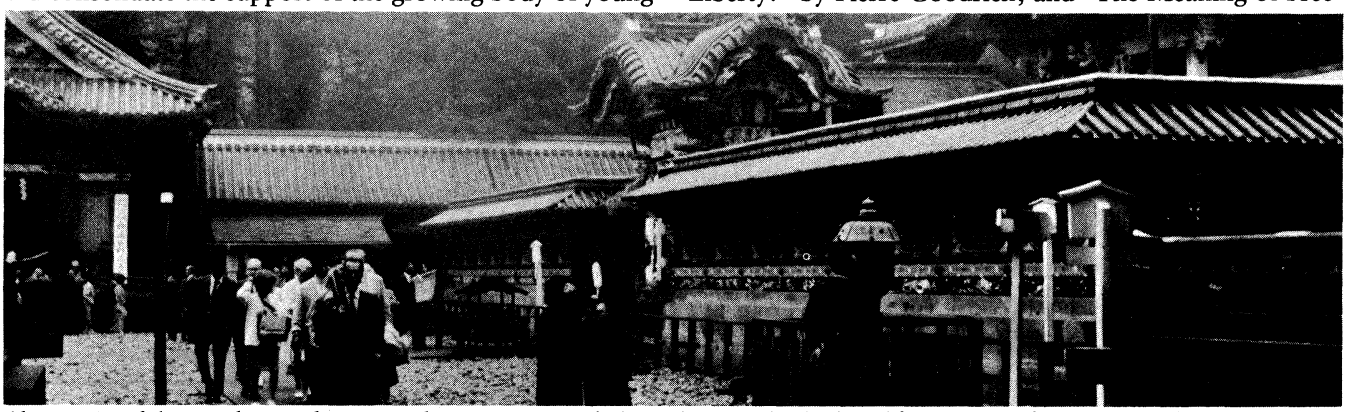
then rose from the audience to answer monetarism. He noted that the gold standard historically was the only discipline on governments. He reaffirmed his own opposition to all monopoly on money and to all government control of money. He presented what he calls his revolutionary program—monetary competition in each country after denationalization or destabilization of money. The private issue of money, he argued, is the only answer.

Hayek set the atmosphere for the rest of the meeting by his optimistic attitude toward the change in the intellectual climate. The intellectual world, he said, is witnessing a reversal of the dominance of collectivist ideas. Hayek feels that it is now time to undertake a strong counter-offensive in favor of freedom, an offensive which would serve to win and consolidate the support of the growing body of young intellectuals in Europe and America which is disenchanted with socialism but lacks a clear vision that the alternative is not traditionalism, but rather the radicalism of classical liberalism or libertarianism. One of the most interesting aspects of the 1978 Mont Pelerin meeting was the speakers' widespread use of the words "libertarian" and "libertarianism" to describe the Mont Pelerin society and its members.



LESLEE J. NEWMAN

Almost 100 of the members and guests at the 1978 Mont Pelerin Society meeting gathered first in Japan for an informal reunion. . . .

The history of Mont Pelerin

Hayek's new optimism is in sharp contrast to the mood in which the Mont Pelerin Society was founded in April, 1947. Hayek's *Road to Serfdom*, dedicated to "Socialists of all parties," had brought him to the forefront of post-World War II debates between collectivists and liberals. Hayek and Ludwig von Mises had been associated with Louis Rougier and Jacques Rueff in the late 1930s, in an attempt to bring together European and American liberals on the basis of the success of Walter Lippmann's *The Good Society*, a book which defended the principles of liberalism against the threat of collectivism. Finally, in 1947, after publication of *The Road to Serfdom*, almost fifty scholars gathered at Mont Pelerin, above Vevey near Montreux on Lac Leman. In addition to Rueff, Rougier, Hayek, and Mises, the American participation was strong and included Felix Morley, F.A. Harper, Leonard Read, Henry Hazlitt, and Milton Friedman.

The name "Mont Pelerin" Society was chosen in place of Hayek's earlier nomination of the "Acton-Toqueville" Society. The founders of the society issued a statement of aims which noted that the "position of the individual and the voluntary group are progressively undermined by extensions of arbitrary power," which had been "fostered by the growth of a view of history which denies all absolute moral standards." Freedom's preservation was viewed as rooted in the widespread ownership of private property. The founders called for further study of "the contemporary crisis"; the functions of the state; the rule of law; and "methods of combatting the misuse of history for the furtherance of creeds hostile to liberty." Concern was expressed for the "problem of the creation of an international order conducive to the safeguarding of peace and liberty and permitting the establishment of harmonious international economic relations."

The Mont Pelerin Society has met five times in Switzerland, three times each in Italy, Germany, Great Britain, the Low Countries, twice in France, and once each in Austria, Hong Kong, and the United States. The 1958 meeting was held at Princeton University, and was inaugurated by papers on "Liberty and Property" by Ludwig von Mises, "Why Liberty?" by Pierre Goodrich, and "The Meaning of Freedom" by Felix Morley. Among the scholars participating in the Princeton meeting were: Jean-Pierre Hamilius, W.H. Hutt, Frank Knight, Bruno Leoni, John U. Nef, Benjamin Rogge, Murray Rothbard, Massimo Salvadori, Helmut Schoeck, and Daniel Villey.

That program featured sessions on "Underdeveloped Countries" with P.T. Bauer, and on "Inflation" with Milton Friedman, Henry Hazlitt, Jacques Rueff, and Bertrand de Jouvenel. M. de Jouvenel noted that the Central Banks' "orthodoxy"of trying to manage money to keep the unit of currency convertible into a given collection of goods and services was a heresy of classical economics:

> As Charles Rist mentions in his famous *Histories des Doctrines Relatives au Credit et a la Monnaie*, the suggestion that convertibility into a given collection of goods should be the essential and defining feature of the currency unit was advanced already in the XVIIIth century by Sir James Steuart, and it has been repeatedly championed up to Irving Fisher's better known advocacy. Ricardo opposed this idea.

Jacques Rueff declared: "There can be no liberal revival so long as inflation goes on. Inflation is a far greater threat to liberty throughout the world today than Marxism." And Milton Friedman noted:

> A third world war is the most obvious threat to the preservation of a free society. If this may be optimistically put to one side, the most serious threat is, I believe, inflation. Inflation is a threat less because of its direct effects than because of the measures that are likely to be taken by government to control the inflation and the effects of inflation on the competitive structure of the economy.

Twenty years later: the same problems

A somewhat similar analysis was presented at the 1978 meeting. Harold Demsetz noted the growth of government military expenditures in opposition to the Soviet Union, a

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phenomenon which he sees as having major consequences for inflation and for government involvement with private sector firms. Any demand for increased military spending could be satisfied only by refusing to increase spending on other government programs. The only other means of blunting this source of increasing governmental involvement in the economy would be to achieve real arms control. Demsetz concluded:

I believe that those basic economic forces that have propelled government expansion in the past are no longer a serious source of continued growth in the relative size of the government sector in the United States. But the ability to capitalize on this depends very much on how adroitly we control unemployment and inflation, including inflation linked to increased defense expenditures, and how successful we are in arriving at real arms control.

Demsetz spoke during a panel on "Is the Tide Turning?" In his talk he proposed that the tide has been slowed in the United States but the trend to growth of government has not been stopped. He attributed the slowdown to three movements: the middle class opposition to taxes, the equal rights movement (which has led to the reduction of interventions injurious to women, those who engage in illicit sexual relations and drug use, and young people generally—those most affected by conscription and public education), and finally, the deregulation movement.

George Stigler, in his presidential address, was critical of existing theories explaining the rise of statism. He was especially doubtful about the "mistaken behavior theory" whereby intellectuals influence the public to accept damaging state interventions. Stigler does not believe that intellectuals are the cause of socialism; he believes they are merely responding to the demand of the public in the same way that the automobile industry responds to demand. He notes that it is not the socially backward or uneducated part of the public which provides the chief support for statism.

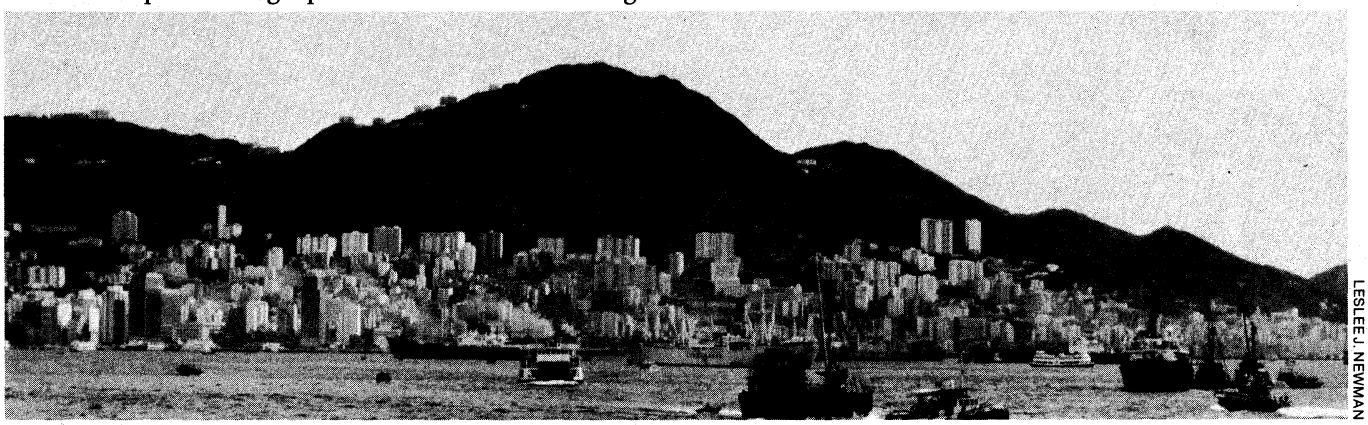
Stigler also criticized the theory that the political process is by its nature biased toward collectivism. He states:

The bias in the process is this: we are presented with two kinds of policies: those which greatly benefit the few and slightly injure the many, and those (including repeal of the first kind of policy) that benefit the many slightly and injure the few greatly. Hence for almost every individual policy proposal of a socialist variety, there will be a cohesive, well-financed, articulate special group to support it, and a large, poorly-informed majority that, if it is informed correctly, will be weakly opposed, and often will be simply unaware of the proposal.

Stigler concluded that the growth of government is the result of the purposeful use of public power to increase the incomes of particular groups in society. In explaining why it is easier in the twentieth century for the state to be used to redistribute wealth, he pointed to the corporate form of business organization, the proliferation of written records, and the decline of the single proprietor, making taxation possible at rates that John Stuart Mill had declared to be impossible.

Much of the discussion on "Is the Tide Turning?" concerned the sociology of knowledge and the role of intellectuals in the creation of public opinion. Henry Maksoud of Brazil subtitled his address: "The Quest for an Ideology." Maksoud noted that Mises had emphasized that statist ideologies

owe their power to the fact that all means of communication are surrendered to their supporters and almost all dissenters have been virtually silenced. Thus, these ideologies were propagated from the chairs of universities and from the pulpit, disseminated by the press, by novels and plays, the movies, radio, and more recently, television.



LESLEE J. NEWMAN

. . . then moved on to Hong Kong, where all the official sessions were held.

For Mises, "to turn the flood one must change the mentality of the intellectuals. Then the masses would follow."

Ralph Harris, discussing England's renaissance of free market ideas, both in the universities and in the press, referred to the concepts Hayek had expressed, following the foundation of the Mont Pelerin Society, in "The Intellectuals and Socialism": "once the majority or at least the most active part of the intellectuals have been converted to certain beliefs, the process by which they become generally accepted is almost automatic and irresistible." Harris concluded with the admonition of David Hume: "Though men be much governed by interests, yet even interest itself, and all human affairs, are entirely governed by opinion."

Henri Lepage reported that an intellectual revolution is occuring in France, a revolution which sees freedom doomed by government intervention in the functioning of society. The challenge of the "New Philosophers" to statism, he said, is matched by that of the "New Economists." Led by Jean Jacques Rosa, these French economists stress the new liberalism against traditional Keynesian conservatism. In addition, Lepage saw as a promising development "the coming out of a French 'libertarian movement', whose ideas will appear very mild to some American 'anarcho-capitalists', but whose mere existence, even if it is yet mostly informal, is also proof that something is changing in France." Indeed, a major event at the Mont Pelerin meeting was a special session on the libertarian movement around the world. Altogether, the extensive interest in libertarianism at the Mont Pelerin meeting and the intensive enthusiasm of the younger participants for an active libertarian movement was one of the clearest ramifications of the Hong Kong meeting. ❑

Leonard P. Liggio is an Associate Editor of LR.

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1979

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Playing the CHINA Card

ROY A. CHILDS, JR.

Consider the absurdity of the Cold War, and of our decades-long foreign policy of global anticommunism. Bear in mind the billions of dollars, and thousands upon thousands of lives which have been squandered on that foreign policy since World War II. Then reflect on the nation, an ally of the United States, which subscribes to the following attitudes in foreign affairs: it is desperately concerned about Soviet expansionism; it is urgently requesting that the United States strengthen its military forces in NATO, and in fact, in the words of a Los Angeles *Times* correspondent, has been "laboring mightily" to shore up NATO, and to promote European unity; it is disturbed by the increasing isolationist sentiment of the United States Congress; it has urged an increased American presence in Africa to counter the presence of the Soviet Union; it wants the United States to drastically increase its defense spending to match Soviet spending on arms; it wants the United States to maintain a strong military presence in Asia, to support Japan and oppose the Soviet Union; it wants the U.S. to help maintain a stable Korean peninsula; it is beginning to purchase high level technology with military applications from the United States; and it finds itself most comfortable with the foreign policy attitudes of such American politicians as Henry Jackson, James Schlesinger, and Ronald Reagan.

If you judged that nation to be Britain or France, Israel or South Africa, Japan or South Korea, Rhodesia or West Germany, guess again. It is instead the newest of American allies in this Orwellian world, Communist China, which has just been recognized by the U.S. government and should, before too long, be obtaining military and economic aid from the U.S. as well.

For the past several years, as Robert Elegant, Hong Kong correspondent for the Los Angeles *Times* has written, China has been working "to accelerate the unlikely transformation of the European Economic Community into a true supranational community, rather than a conglomeration of intermittently antipathetic nation-states. Peking has further striven to impress upon Japan the acute danger to its national existence posed by the Russians. . . ." Moreover, far from being hostile to the U.S., China has been very concerned about American retrenchment in the world, and "in recent years, every visiting foreign minister, premier or president whose country possesses military ties with the U.S. has been urged to maintain those ties. The list includes such diverse nations as Japan, France, Britain, Thailand, Germany, and the Philippines. . . ."

And so, in its attempt to build a new order in Asia in the post-Indochina War era, China has been attempting to build an international anti-Soviet coalition, to resist what China calls Soviet "hegemony." The People's Republic of China (PRC) has gotten pledges of support for this from the former members of the now-defunct SEATO—which the PRC has virtually tried to resurrect from the grave—and, in doing so, has aligned itself with precisely those nations which have heretofore formed the bulwark of "anticommunism," and at least tacitly *against* insurgent communist movements which supposedly derive their "inspiration" from Communist China.

Western Europe, too, has been moved into this international realignment of military relationships: Chinese acquition of both aircraft and weapons from Britain and France has been—sometimes secretly—encouraged by the United States. And, we are told, in the manner of "one-step-at-a-time" diplomacy, leaking first one bit of information to the American people, and then another, and then another, never being explicit about the goal or purpose—that not only would Peking "welcome" access to American arms as well, but that, as Drew Middleton has written in the *New York Times,* normalization of relations with the U.S. will "enable the Chinese army to prepare a more formidable opposition to the recently reinforced Soviet forces along the Northern frontier" (December 18,1978).

In the meantime, with Western Europe supposedly worried by Soviet power, Leonid Brezhnev's protests about

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Western military aid to China have been shoved rudely aside. The Chinese have discussed using British equipment and technical assistance in modernizing their four thousand aging Russian-designed MIG-19s, as well as their ground-support equipment for both military and civilian aircraft. They have also discussed purchase of antitank missile systems, including the Swingfire, plus seventy "Harriers," a vertical takeoff and landing fighter now in service with the U.S. Marine Corps.

Early in December, the Bank of China concluded a $1.2 billion export credit deal with ten British banks, part of which will pay for the military equipment now being discussed. Peking and France have just concluded a seven year agreement valued at $13.6 billion, and China has also been making several important purchases from its old enemy, Japan. And that is only the beginning. Western countries and Japan are making arrangements to loan Communist China tens—perhaps hundreds—of billions of dollars over the next few decades, to finance the rapid development which the Chinese call the "four modernizations"—agriculture, industry, science and technology, and defense—designed to make China into a true "superpower" by the year 2000. These modernizations, often to be paid for immediately by Western taxpayers and international monetary manipulations, are to be paid for in future Chinese production—production from Western-built factories, and Western-developed oil reserves. As Kenneth Lieberthal wrote in the October 23 issue of *Fortune,*

> Some kinds of trade deals that have been debated in China since the mid-1970's have recently gained approval. Peking seems ready now for arrangements in which a foreign company provides technology, machinery, and managerial expertise and is paid in the output of the venture for a specified period of years, after which the venture reverts to China. Deals that involve the processing of raw materials supplied from abroad are now in the offing; so are arrangements that involve the assembling of components for foreign companies. The China Resources Company, which officially represents the People's Republic in Hong Kong, has privately expressed an interest in getting together with foreign companies to set up jointly owned ventures, based in Hong Kong and Macao, and recent articles in the Chinese press suggest that the possibility of joint-ownership deals within China is being debated.
>
> China is especially interested in foreign participation in the extractive industries (mining, offshore oil), mineral processing, and communications; to a lesser extent there is also some interest in deals involving agriculture. Pennzoil, Exxon, Union Oil and Phillips Petroleum have held intensive talks with the Chinese in recent months on the development of offshore oil reserves, and Mobil is scheduled to negotiate with the Chinese in November. These ventures, in which each side has expressed serious interest, could produce agreements involving billions for each company. It is still not clear how China would pay for these and the other massive projects it is now negotiating. . . .

The New Republic has an idea, however: "China most likely will not pay us with gold or hard currency, as they will in great measure pay the harder-nosed Japanese. They will pay us with our own credits, deflated dollar after deflated dollar, which will have the side-effect of intensifying the capital crunch at home." In the meantime, taxpayers of Japan and the West will help merrily to build the economic power of the slumbering Communist giant, in much the same way that the West did the Soviet Union in the 1920s and 1930s. The socialist weekly *In These Times* has pointed to just a couple of the more important purchases already made by China, against credit, from Japan and the West:

> *Oil.* China reached agreement with the Japan National Oil Company for joint petroleum development of the Po Hai Gulf and the Pearl River Delta. Five or six major American oil companies have submitted further oil and gas proposals. *Business Week* says the biggest deals are yet to come.
>
> *Iron and Steel.* A German group headed by Schloemann-Siemag is negotiating to construct the largest steel complex in the world in Hopeh Province, at an even greater cost of some $14 billion. Nippon Steel Company is already constructing a $3 billion steel plant on the outskirts of Shanghai. Kaiser Engineers of the U.S. has just signed a contract for the complete construction of two giant ore mines. China has signed a protocol with four West German mine equipment producers for $4 billion in mine equipment, plants and technology.

But most important of all, there is that most ominous and dangerous of developments: military aid. That the United States is moving rapidly into what can only be seen as a military alliance with Communist China against the Soviet Union is not only conclusive evidence—if any were needed—that the actual motives behind an interventionist foreign policy have nothing to do with "anticommunism," but is also a horrifying symbol of the high stakes involved in today's politics of global interventionism. And behind all the obfuscations and bromides of the Carter administration and its apologists, high stakes, and not "international cooperation," are what are involved in the new U.S.-Chinese relationship, stakes openly admitted by the elite which shapes our foreign policy. They even have a name for this new move in international relations, and have been openly debating the policy and its ramifications for several years. They call it "playing the China card," and it has been a long time coming.

The card is played

President Carter's decision to play the China card by cutting off diplomatic relations with Taiwan and recognizing the government of Peking instead, was announced on the evening of December 15, in classic Nixonian fashion. Suddenly, dramatically, in a manner calculated to produce an image of presidential "decisiveness," the announcement came on a Friday evening, the penultimate weekend before Christmas, almost as though the intent were to bury the controversy which would certainly be provoked, before it could even surface.

The Camp David accord had been collapsing like a house of cards in slow motion, with the Nobel peace prizes impulsively given to Begin and Sadat seeming in retrospect like mocking symbols of wishful thinking. SALT II looked to face massive opposition in the U.S. Senate even before any agreement had been reached between the U.S. and the Soviet Union. And the Shah of Iran felt his grip on his beleagured country loosening in the midst of riots by the people and murders by his army—barely weeks after Carter's assurances that the Shah was there to stay. Foreign policy failures were everywhere, and Jimmy Carter seemed, once again, to be in over his head.

Hence the unexpected move, so reminiscent of Nixon's announcement in 1971 that he would visit China. The joint communique from which Carter read said in part that

> The United States of America recognizes the Government of the People's Republic of China as the sole legal Government of China. Within this context, the people of the United States will maintain cultural, commercial and other unofficial relations with the people of Taiwan.
>
> The United States of America and the People's Republic of China reaffirm the principles agreed upon by the two sides in the Shanghai Communique and emphasize once again that:

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Mao Tse-tung, shortly before his death in 1976 . . .

> Both wish to reduce the danger of international military conflict.
>
> Neither should seek hegemony in the Asia-Pacific region or in any other region of the world and each is opposed to efforts by any other country or group of countries to establish such hegemony. . . .
>
> The United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.
>
> Both believe that normalization of Sino-American relations is not only in the interests of the Chinese and American peoples but also contributes to the cause of peace in Asia and the world.

In his own remarks, Carter claimed that

> we do not undertake this important step for transient tactical or expedient reasons. In recognizing that the Government of the People's Republic is the single Government of China, we are recognizing simple reality. But far more is involved in this decision than a recognition of reality.

Then, according to *Newsweek*, "his eight minute speech finished, Carter leaned back in his chair, unaware that a microphone was still turned on. Whimsically, and with a touch of smugness, the President remarked, almost to himself: 'Massive applause, throughout the nation.'"

Not quite. Opposition to Carter's move came swiftly, from all segments of the political spectrum. Senator Barry Goldwater accused Carter of "one of the most cowardly presidential acts" in history, and announced his intention to sue the President over the abrogation of the mutual defense treaty with Taiwan. Senator Jesse Helms, who only a few short weeks before the Administration's decision was announced had been assured that there were *no* plans in the months ahead to recognize Peking, said that he was "appalled at the unreliability of the Administration's words." Leaders of the American Conservative Union announced a campaign to block termination of the mutual defense treaty with Taiwan. *National Review* echoed the charges of "betrayal," quoting George Bush, who said "we gave all and got nothing," and claimed that "around the world, especially in embattled nations, somber conclusions are now being drawn. From the fall of Saigon, to the collapse of the Western interests in the former Portuguese colonies, to the establishment of advanced MIG fighter-bombers in Cuba—well, to quote John F. Kennedy, the word has gone forth that the U.S. will sell out a friend, an ally, and a principle." Even the liberal *New Republic* editorialized, "let those who count on us be warned."

In Chinese communities throughout the United States, thousands of people demonstrated on both sides of the issue: pro-Taiwan, pro-PRC, and even pro-Gang-of-Four. Severing diplomatic ties with the Taiwan government was branded "a sellout" by some, "realistic" by others. Demonstrators in New York City, San Francisco, and elsewhere clashed, often violently—giving vent to explosive emotions on both sides.

In Taiwan itself, there were anger and outrage, and charges of betrayal and hypocrisy. The U.S. embassy in Taiwan's capital, Taipei, saw demonstrators slapping up defiant posters: "We don't need the U.S.", and "Oppose Relations with the U.S. and the Communist Bandits." The demonstration grew. Posters were draped over the windshield of an embassy car; eggs and rocks were thrown wildly. Taiwan's President, Chiang Ching-kuo, the 68-year old son of Chiang Kai-shek, declared that the U.S. intention to abrogate the 24-year old mutual defense treaty with Taiwan would have a "tremendous adverse impact upon the entire free world. . . . The government of the United States alone should bear full responsibility." He was especially angered at having been notified only eight hours before Carter's sudden speech to the nation.

The American people seemed to react differently. They were not enthusiastic about recognizing the PRC, but neither were they excited about further support of Taiwan. As the *New York Times* said, surveying the results of a poll the newspaper undertook in conjunction with CBS News, "Americans were not enthusiastic about supporting Taiwan, especially to the extent of providing military aid . . . only 26 percent said they favored continued arms support for Taiwan, while 58 percent said they opposed further arms sales to the Nationalists." Moreover, "in general, the poll results suggested that Americans in increasing numbers, wanted a peaceful world, and opposed any United States involvement in foreign crises."

While Taiwanese (and American conservatives) regard Carter's derecognition of Taiwan and his giving of a year's notice for ending the mutual defense treaty as a "betrayal", it is so only in symbolic terms, the terms set by those who see every disengagement of the U.S. from every foreign entanglement as evidence of a "failure of nerve," or a weakness

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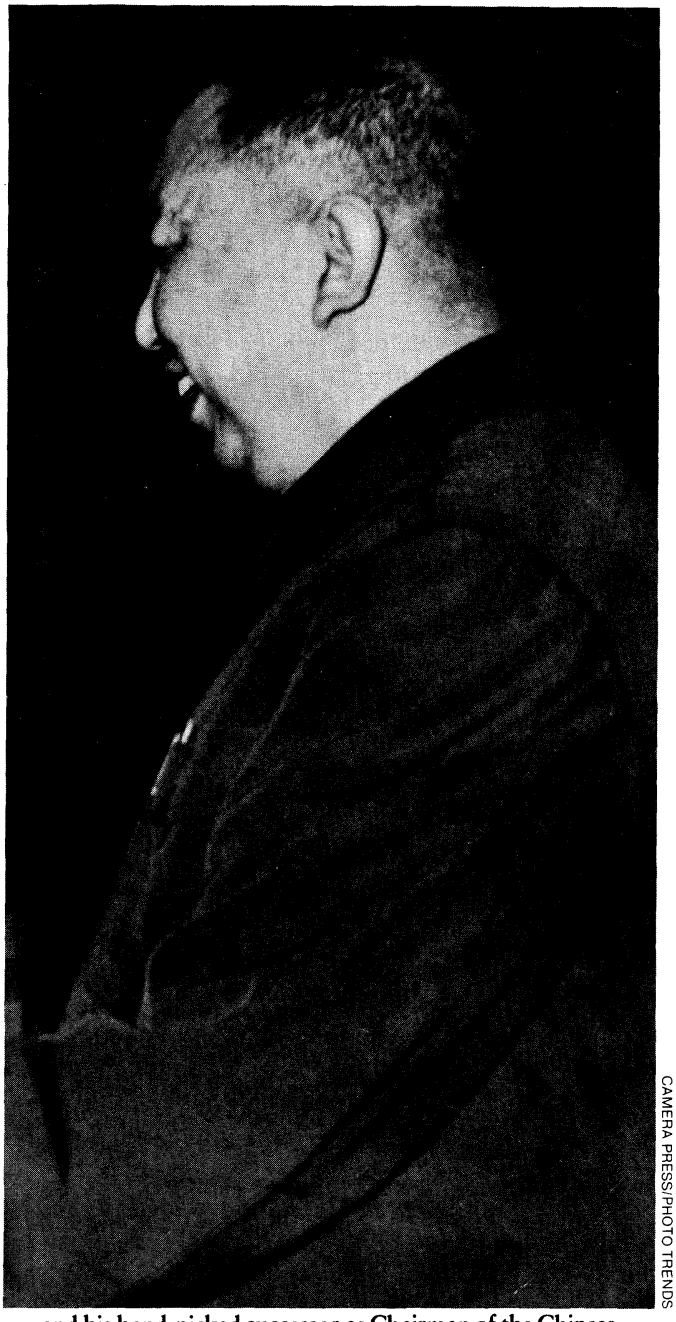
of the American will. Recognition of the PRC *is* in fact an act of simple realism in today's world, where acts of diplomatic recognition have no moral content whatever, but merely reflect the reality of a government's having established control in a given area. If recognition conveys a moral sanction, then where are the calls for ending recognition of virtually every regime on the face of the planet? A policy of realism, if consistently carried out, would lead to a policy of recognizing *both* Taipei *and* Peking, i.e. a policy of "two Chinas." But this option was effectively closed off by the Taiwanese themselves: both sides have adamantly maintained, ever since the victory of the Communist Chinese over the Nationalists in the Chinese civil war, when the Nationalist army escaped to Taiwan, that there was but a single China; and each has claimed to be the only legitimate government thereof.

Moreover, the charge of "betrayal" has less to it than meets the eye, even in symbolic terms. Carter has given Taiwan one year's notice on ending the mutual defense treaty, which is precisely what that treaty—which should never have been signed in the first place—requires. We hear in addition that the PRC has made absolutely "no concessions," that the U.S. has given up everything, and received nothing in return. But nothing could be further from the truth. Teng Hsiao-p'ing, the Vice Premier who is the architect within China not only of normalizing relations with the U.S., but of the campaign for the "four modernizations" as well, has in fact made several concessions. First, he has dropped the earlier demand that the mutual defense treaty with Taiwan be abrogated immediately; secondly, he has dropped the demand for the "liberation" of Taiwan, talking instead now about ultimate "unification," granting tacitly that the PRC should not and cannot regain Taiwan by force, claiming that "unification" with Taiwan could take a decade, a century, or even a thousand years. Teng Hsiao-p'ing has said that he has "no intention" of seeing the standard of living on Taiwan lowered, and does not want to violate Taiwan's "unique political system." Consistent with the view that China's relationship with Hong Kong may be the model for the PRC-Taiwan relationship, Teng has begun showing highly favorable, pro-Taiwan films on Chinese television, praising the achievements of Taiwan. Finally, Teng has assented to the American plan not only to continue all cultural and economic ties, but to continue to provide aid to Taiwan, including weapons sales, even after the mutual defense treaty is ended. For Communist China, these are significant concessions.



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. . . and his hand-picked successor as Chairman of the Chinese Communist Party, Hua Kuo-feng.

Interventionism runs amok

In a general way, at least, libertarians can welcome normalization of relations with Communist China, insofar as that involves simple diplomatic recognition and opening of cultural and economic relations. But the problem really is that the playing of the China card goes much further, and has implications that are menacing indeed, menacing not only to world peace and U.S.–Soviet relations, but to possible future relations between the U.S. and China as well. For the China card is not merely being played against the Soviet Union, which has damned good reasons to be "edgy," as one headline put it, over future U.S.–China military deals. It is a card being played against other factions as well, in a continuing power struggle within China itself, thus constituting an attempt to directly influence the internal politics of a volatile and unstable nation. More specifically, it is an attempt to reinforce the power and prestige of the so-called "moderate" faction represented by Teng Hsiao-p'ing, who has moved swiftly and suddenly to power in China, against so-called "radical" factions which are less receptive to rapid economic development as well as to extending ties to the U.S. and the West.

And this is no joke. We should consider very clearly the implications of playing Chinese power blocs against each other. China is not Iran, after all: it contains nearly a quarter of the world's population, and, in the event that rapid modernization should occur, it could make a powerful foe—especially if, in years to come, an anti-U.S. faction came to power, opposing, as the anti-Shah forces in Iran have, U.S. meddling in their internal affairs. Teng Hsiao-p'ing is no spring chicken: he is 74 years old, has already been purged twice in power struggles, and will not live forever.

Consider the domestic events that led up to *China's* playing of the *U.S. card*. On the U.S. side, the possibility of playing the China card has been discussed for more than a dec-

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ade. Richard Nixon decided that relations between the two countries should be normalized in 1967, a year before his successful run for the presidency, and the U.S. has been moving toward such ties since the early days of his administration. Nixon reportedly hoped to normalize relations during his second term, but was blocked by the Watergate scandal. Gerald Ford hoped to normalize ties as well, but found himself faced with the opposition of right-wing Republican Ronald Reagan in the Republican primaries; normalizing relations then, when he was faced with a Reagan threat from the right-wing, would have surely sunken Ford's chance for the 1976 nomination. So the playing of the card was left to Jimmy Carter. But in China, the situation has been much more volatile.

In 1976, a senior analyst for the CIA, Roger Glenn Brown, took the unusual step of publishing an article in the prestigious *Foreign Policy* magazine, a signal to the Chinese that, although temporarily stalled during the Ford administration, the foreign policy elite in the U.S. was still interested in rapproachement with China. His article was a detailing of the relationship between Chinese foreign policy and Chinese internal politics, meant to underscore the importance of improved U.S.–Chinese relations.

Brown began by recalling the 1969 border clash between China and the Soviet Union:

> On March 2, 1969 an unusual incident occured on the frozen Ussuri river near the desolate island which the Chinese call Chenpao and the Soviets call Damansky. On numerous occasions since the early 1960s, there had been periodic nonshooting skirmishes in this and other areas along the disputed Sino-Soviet border. On March 2, 1969, for the first time, Chinese soldiers opened fire on a Soviet patrol, killing 7 soldiers and wounding 23. On March 15, the Soviets retaliated with a full-scale military engagement in the same area during which hundreds of troops on both sides were killed and injured. Following these conventional military exchanges, Soviet spokesmen hinted in a number of forums that a nuclear attack on China might become necessary. By August 1969, the situation had deteriorated so badly that some Western observers were convinced that war was inevitable in the near term. In short, the events of 1969 marked the most serious crisis in the entire history of Sino-Soviet relations.

If more recently published reports are correct, the situation was even more dangerous than most analysts knew—and all the more dangerous because the U.S. was positioning itself between the two Communist giants. Roger Glenn Brown pointed out in that Summer 1976 article that this crisis of 1969 has always been difficult to explain, "but a good case can be made that the initial Chinese attack on the Soviets was the outcome of intense political infighting within China, both over who would set Chinese policy and whether Peking should execute a major departure in its foreign policy by improving relations with the United States. In the fall of 1968, Premier Chou En-lai convinced Chairman Mao Tse-tung to move in this direction, but this decision was apparently reversed in February 1969 because of intense opposition from China's military establishment and radical leaders like Chiang Ching and Tao Wen-yuan who had gained prominence during the Cultural Revolution."

So-called "radicals" in the government, such as the powerful defense minister Lin Piao and his allies in the military, opposed the move for a variety of reasons, including the fact that it would have been a triumph of policy and prestige for Chou En-lai, Lin's chief rival. According to Brown's analysis, the clash with the Soviets under these circumstances helped reinforce the power of Mao and Chou, who were in a precarious political position; it discredited Lin Piao, who reportedly favored rapproachement with the Soviet Union; and it produced an increase in Sino-Soviet tensions so as to provide "a dramatic justification for a future opening with the United States." Thus the March 2 clash saw "Mao and Chou acting hastily for highly political reasons." Mao Tse-tung and Chou En-lai, that is, were willing to risk the deaths of hundreds of Chinese soldiers and even war with the Soviet Union, in the midst of a power struggle within their country, to discredit those within China who opposed detente with the United States.

It is in this context that one ought to understand the precarious, explosive nature of American intervention at its most meddlesome—intervention in a crisis between Communist China and the Soviet Union.

For according to H.R. Haldeman, in his book *The Ends of Power*, in an account substantially accepted by foreign policy analysts, the situation was terribly explosive during the 1969 clash. According to Haldeman, the Soviet Union had moved nuclear armed divisions within two miles of the Sino-Soviet border, and the U.S. intelligence and aerial photos revealed "hundreds of Soviet nuclear warheads stacked in piles." For years the Soviet Union had been paranoid about China.

It was in this context that, according to Haldeman and others, the Soviets approached the United States with the suggestion that the U.S. join the Soviet Union in a joint venture: a strike against China's nuclear plant. Richard Nixon turned down the suggestion, but, upon being informed that the Soviets intended to go ahead anyway, decided to intervene, tacitly placing the U.S. in the midst of a Soviet-Chinese conflict. Nixon and Kissinger sent a "signal" to the Soviets to the effect that the U.S. was "determined" to be a "friend" of China. The Soviets—as they have so often in the past—pulled back from a possible nuclear confrontation.

It is in this situation that Lin Piao attempted his aborted coup, and reportedly was killed in a plane crash escaping to the Soviet Union. Thus the fall of Lin Piao was the result of an internal power struggle having foreign policy as a key issue. And this account, of course, only scratches the surface of Chinese domestic politics.

LOS ANGELES TIMES

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WIDE WORLD PHOTOS

An estimated 10,000 Taiwanese protest the normalization of relations between the U.S. and mainland China.

In the light of these continual power struggles, purges, upheavals, and intrigues—conflicts of which U.S. intelligence has barely any understanding—we should ask just what the U.S. is risking—and why—in this involvement in internal Chinese politics. In establishing ties with China, and in encouraging allies to do so as well, the U.S. is necessarily linking itself with particular factions and leaders in China.

And that is precisely one of the goals of normalizing relations, of "playing the China card": to lend support to Teng Hsiao-p'ing and other so-called "moderates" during the post-Mao period—these "moderates" (the distinctions between "radicals" and "moderates" or "pragmatists" in China are real, but the use of these particular terms is vacuous) being anti-Soviet, pro-modernization, pro-relationships with the West. It is "balance of power" politics played with a vengeance, the foreign policy of global interventionism waged with a cynical disregard of the anticommunist rhetoric which has rationalized the international crimes of the American State since World War II. Neither "national security" (by building up the military and economic power of *Communist China*!?) nor a crusading anticommunism (by allying with *China*?!) can any longer cloak the realities of American meddling in the international arena. That this rationale has just about run out of steam should now be clear, symbolized by the fact that one of the unmistakable effects of the new turn in foreign policy is the enhancement of the power and prestige of this once-feared and loathed Communist giant.

All of this should be borne in mind when opponents of detente between the Soviet Union and the United States complain that, under an alleged "detente," the United States is making grave and serious sacrifices of its interests to placate the U.S.S.R. The U.S. is now maneuvering to support China in conflicts with the Soviets, knowing that the Russians are "paranoid" and, according to the *New York Times*, "highly sensitive to the military threat they see posed by the Chinese along a very long border; so sensitive that they maintain a stronger military force facing the Chinese than they do in eastern Europe." In the back rooms of international diplomacy, the United States is working busily to cement an anti-Soviet alliance which includes military and economic aid to the Soviets' most hostile rival, an alliance which, over the next few years, will include massive modernization of China's primitive ground forces, to increase China's military might along the Soviet-Chinese border.

These antidetente forces, in a desperate attempt to point to evidence of Soviet "expansionism," can refer only to the actions of alleged Soviet "proxies," such as Cuba in Africa. But the double-standard of these interventionists has covered up obvious parallels in American policy: for if Cuba is to be regarded as a "proxy" of the Soviet Union, what has France been to the U.S. in Africa, or South Africa or Rhodesia? And what have Israel, or Iran, been in the Middle East, or Japan in the Far East? But this hypocrisy, too, has now been unmasked, as the U.S. prepares the greatest "proxy" of all—the People's Republic of China, the new shining star in the anticommunist alliance, and the new "running dog" of U.S. imperialism.

And let it not be forgotten either that by allying itself with China, the U.S. finds itself oddly positioned in the new Indochina war—between Vietnam and Cambodia. By allying itself tacitly with Cambodia, that great butcher of the east, that sinister genocidal state run by filthy murderers, Jimmy Carter finds himself in bed with the Khmer Rouge. How fare "human rights" *now*, Mr. President?

A new foreign policy now!

For decades now, the American people have been manipulated and lied to, and told that the reason they had to be victimized year after year by having tens of billions of dollars of their incomes confiscated by the American state to support a massive military machine and a foreign policy of global interventionism, was to combat communism, to "protect" the "free world," and to oppose tyranny. The lies drip from one corner of the mouths of our leaders, blood from the other. There is no longer any reason whatsoever to take those leaders seriously. They are right about only one thing: the foreign policy which had led us into wars and crises is a *bipartisan* foreign policy, supported by both Republicans *and* Democrats, Liberals *and* Conservatives. We have had enough of these scoundrels, and they ought to be summarily thrown out of office, once and for all. The American people need a new direction, and a new foreign policy: the direction of libertarianism, the foreign policy of noninterventionism.

The alternative is for the chains of the State to be fastened ever more tightly, ending in tyranny and nuclear war. We cannot afford to demand less: a new liberty and a new foreign policy for Americans, one and inseparable. ❑

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"Well, and what was so remarkable about Ch'in Shih-huang? He e
scholars. We, we executed 46,000 of them! This is what I answe
democrats: you think you insult us by saying that we are like Ch'i
you call us tyrants— we grant readily that we have those quali
deplore that you remain so much below the truth that we have to
out your accusations!"

—Mao Tse-tung, quoted in Simon Leys's Chin

DAVID HART

Ch'in Shih-huang was the first emperor of China, founding the unified empire in the third century B.C. In 213 B.C. he ordered all books presenting the views of his opponents burnt and more than 400 confucian scholars buried alive. That the "great helmsman," Mao Tse-tung, could in his collected works not only compare himself openly with such a butcher, but boast at having surpassed him a hundredfold, is enough to leave one flabbergasted. But, then, Mao never shrank from admitting his crimes; he left that coverup to his apologists throughout the world.

Why has it taken so long to expose the gross violations of human rights—the massacres, torture and imprisonment—that have occured since the Chinese Communist Party came to power in 1949? Why have western journalists, intellectuals and academics remained silent until quite recently, when the evidence had become so overwhelming that they could no longer ignore it? A similar phenomenon occured during the 1930s in Soviet Russia. Fellow travelling, a sort of arm chair communism, blinded intellectuals to the horrors of mock trials, forced collectivization, shooting of dissidents and black marketeers, corruption, mass arrests, imprisonment, and deportation to Siberia. It seemed that if repression occured under a "right wing" government (Franco's Spain, Hitler's Germany, Mussolini's Italy) fellow travellers would march to the barricades in defence of liberty—as many did in Spain. They were remarkably reluctant to fight the same evils when committed by their beloved "left wing" governments, testifying to their faith in the divinity of the "dictatorship of the proletariat".

Some left wing intellectuals, however, were acutely aware of the terrors of the Stalinist regime. Boris Souvarine wrote an illuminating biography of Stalin in 1935, because there was enough information by then for them to piece together a rough outline of what was actually going on behind the "iron curtain". People like Robert Conquest (*The Great Terror*) and Aleksander Solzhenitsyn (*The First Circle* and *Gulag Archipelago*) have in recent years only added moving and bloody detail and have not radically altered the story as it leaked out during the 1930s, 1940s and 1950s. A similar situation has occurred with China. Left wing intellectuals, until recently, have turned a blind eye and a deaf ear to the stories of repression, murder, famine, imprisonment, and the wholesale denial of liberty to the Chinese people.

The left has contented itself with the glorious "successes" of socialist agriculture and industrialization, accepting the need for some violence in order to remove the last vestiges of the "old order" and pave the way for the millenium. Basic human rights have been regarded as expendable, at least until socialism is firmly established, so Maoist fellow travellers have not lost any sleep over the "re-education" of Chinese dissidents. One becomes truly speechless when confronted by their naked apologia for the "Chinese experiment", an apologia that flies in the face of economic law and concern for human dignity, liberty and independence. A shining example of such apologia by two New Left historians reveals the left's unconcern for uncomfortable details:

> Nowhere is the contemporary Chinese government given just credit for feeding and providing social and educational services for its people, or with eliminating the social evils endemic to their lives throughout the last century: opium traffic, prostitution, gambling, famine, plague, floods, etc. Even without massive foreign aid the Chinese government has been among the most successful in the Third World to deal effectively with the problem of growth.
>
> [Leigh and Richard Kagan, "Oh Say Can You See? American Cultural Blinders on China," in *America's Asia: Dissenting Essays on Asian-American Relations*, edited by Edward Friedman and Mark Selden.]

Reality, unfortunately, is somewhat different. Instead of there being a socialist paradise in China, the following facts should be noted: (1) there is a "new class" inhabiting Peking, which has privileges denied to all other Chinese; (2) extensive rationing of food and consumer goods takes place there, and ration cards are now an alternative currency,

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CHINA: The Annihilation of Human Rights

even for prositution; (3) Chinese agriculture is amazingly inefficient, and, as in Russia, 25 percent of non-cereal production comes from family plots which comprise only 5 percent of all cultivated lands; (4) health services and education are *not* free, and there are, moreover, special hospitals for cadre and party officials; (5) a whole class of unemployed live on the fringes of Chinese society—beggars, dissidents, thieves, black marketeers, and prostitutes live in an underworld in the big cities, constantly harassed by the police; (6) travel requires authorization by the prefecture "Revolutionary Committee"; there are two classes of travel, one for cadre and officials and one for ordinary Chinese; and all train tickets and hotel bookings can be bought only by showing the proper authorization; (7) local neighborhood committees or "units" control lodging, food, leaves of absence from work, divorce, marriage, and even the number of children permitted to each couple; (8) homosexuals are severely punished—often executed—as is anyone who engages in sexual behavior outside of the puritanical norms set down by the party; (9) catastrophic crop failures have occurred because of the idiotic "Great Leap Forward." L. La Dany estimates that 50 million people died during the famine years of 1960–62. Cannibalism, sale of children, begging, peasant abandonment of fields too poor to work, were the result of the massive economic dislocation caused by government policy. Needless to say, however, the party elite was well fed during the famine, and the shops in Peking were better stocked than anywhere else in China. [For these facts and more, see the articles in the special China issue, November 1978, of *Quadrant,* the Australian magazine, edited for this special issue by Simon Leys. See especially M. and I. London's "The Other China," and C. and J. Broyelle's "Everyday Life in the People's Republic."]

The problem for the libertarian in dealing with China is to combine an uncompromising defense of the liberty of the Chinese people with a defense of the revoution which has been left tragically incomplete by the communists. The revolution was gloriously libertarian insofar as it enabled individuals or groups of peasants to regain land that they had justly owned by the mixing of their labor with the soil that they worked. The revolution was sabotaged by the unjust confiscation of land and property from richer peasants, shop owners, merchants and industrialists, many of whom had justly acquired it on the market. The result of this betrayal of the revolution was the creation of a new class of parasitic rulers (far more brutal and powerful than the Kuomintang) composed of communist party bureaucrats, cadre, the military, and industrial managers. Libertarians must therefore be independent of conventional viewpoints in their analysis of Chinese history, since their defense of revolution *and* liberty, together with their rejection of imperialism and government intervention cuts across traditional left/right interpretations.

The truth emerges

Three important books have appeared in the last 5 years which expose the crimes of both the Chinese communist government and the western intellectuals who have defended it. They are *Prisoner of Mao* (1973) by Bao Ruo-wang and Rudolph Chelminski, *Chinese Shadows* (1974) by the indefatigable Simon Leys, and Amnesty International's Report on *Political Imprisonment in the People's Republic of China* (1978). All three are important because each exposes a different aspect of the Chinese state.

Chinese Shadows was written after Leys's trip to China in 1972. It attempts to expose the simplistic and apologetic accounts of China written by Western journalists and academics since the "opening up" of that country after Nixon's visit in 1972. Leys was stunned by the systematic destruction of art and architecture that occurred during the Cultural Revolution (1966–69). As an art historian he was particularly interested to inspect well known archeological sites and museums; and one shares his shock at the deliberate, outright destruction of "feudal" or "bourgeois" art by the Chinese officials. It is almost amusing to learn from him that in the "classless society" there are 30 hierarchical classes within the Chinese bureaucracy alone, "each with specific privileges and prerogatives." China has definitely advanced since the sixth century B.C.; then there were only 10 such classes. And the politicization of cultural life has rendered literature, music, art and education in China barren—which is doubly tragic given the high regard of the Chinese people for their wonderfully rich cultural heritage.

Leys manages to capture the tragicomic nature of this destruction in anecdote after anecdote. He speaks of his visit to a museum "dedicated to the visit Mao paid to the university in 1958. One is happily surprised to see there, under glass, a dirty old undershirt; this startling specimen of underclothing owes its immortality to a remark made by the Chairman, who saw it on the back of a student in a university workshop and said, 'Bravo, there is one who looks like a worker!'" There is the barrenness of music: Beethoven and Schubert are banned as "counterrevolutionaries," while Chinese music fits a party line:

> Only one symphonic creation is performed and broadcast (without surcease): the "Yellow River", a concerto for piano and orches-

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tra, which is in fact only a remake of a work written during the war years. In 1972, while on a trip in the provinces, I heard the dean of our group compliment the pianist who had interpreted this mediocre Rachmaninoff pastiche and ask him what other pieces he had in his repertory. The pianist made this disarmingly sober reply: "None."

There is also the destruction of language, such as a radical reform of writing—the substitution for Chinese characters of a phonetic transcription of them in Roman letters—a decision, as Leys tells us, "of enormous importance for eight hundred million people . . . decided without any public debate, on the sole basis of a Mao saying." There is the evisceration of outlets for Chinese writing: a new Chinese literary monthly defined, in its first issue, the kind of literature which alone would be welcome in its pages:

> Our publication welcomes all novels, essays, articles, works of art which present in a healthy way a revolutionary content. They must exalt with deep and warm proletarian feelings the great Chairman Mao; exalt the great, glorious and infallible Chinese Communist party; exalt the great victory of the proletarian revolutionary line of Chairman Mao.

Then there is the desecration of temples and architecture: "The Temple of the White Dagoba (Pai-t'a ssu), an eleventh-century Buddhist temple rebuilt in the fifteenth century, was a warehouse and refuse dump with a padlocked entrance, and all one could see over the wall was ruin and desolation." There is the systematic separation of the Chinese from their own cultural traditions in every way:

> In Nanking Street, the To-yun hsuan shop (which specialized in paintings and artistic reproductions) sold only propaganda posters and portraits of Chairman Mao in the part of the store accessible to the public. However, for foreigners, a back room was unlocked: there, one could see paintings in the traditional style and reproductions of old paintings. These prophylactic measures to isolate the Chinese from their own culture are applied throughout China.

Finally, there is the tedious stomping on ordinary enthusiasm:

> In the old days Chinese opera houses had a kind of joyful slovenliness, a popular, warm, living atmosphere. The dangerously expert audience booed and applauded with absolutely no inhibition. The Maoist authorities, who fear nothing so much as spontaneous mass happenings (which might always degenerate into uncontrollable avalanches), put the houses in order and started re-educating the audience: the audience was no longer allowed to roar its enthusiastic *"Hao!"* after each virtuoso piece, but was directed to clap only as the curtain fell, in Western academic fashion. It took some years to reform age-old public habits; when the connoisseurs —and in places like Peking everybody was a connoisseur—showed signs of being overcome by their former intoxication, and when in the pressure cooker of a really good audience the *"Haos"* started rocketing about as they had in the good old days, small red-light panels marked "Silence" would start to blink furiously at the four corners of the auditorium.

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"In spite of the dangers of protest, men and women in China are opposing the Communist regime by distributing literature, organizing protest groups, fleeing to Hong Kong, organizing political parties, and even forming revolutionary armies."

And such pettiness is everywhere.

Prisoner of Mao is the story of Bao Ruo-wang, a Franco-Chinese who was incarcerated in the Chinese labor camp system because of various undefined "crimes against the state". (Bao did work for the U.S. military but it is unclear whether he was involved in criminal activities). Bao is unique in that he is one of the very few Westerners (perhaps the only one) who has returned from the Chinese Gulag. He was released when the French government, which had studiously ignored him until then, recognized China in

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1964. *Prisoner of Mao* is the story of his seven years in the labor camps.

The Amnesty International Report is written in terse and unemotional prose; yet it is the most moving account of the three. The Amnesty researchers have carefully documented their case from official Chinese sources. ("Official documents alone present sufficient evidcence that the treatment of political offenders results from a consistent policy of denying to individuals the right to deviate from standards of behavior defined by official policy.") And they have cross-checked this with oral testimony. ("The accounts of various people who do not know each other and who come from different places in China often present the same picture of a particular event and penal practice, and can sometimes be further corroborated by official documents or statements.") After thoroughly describing the different kinds of prisons and reform programs, the laws and legal procedures, the treatment and condition of prisoners, the Report gives five case histories which have particularly concerned Amnesty International:

Lin Xiling: a fourth year law student who was imprisoned after the "One Hundred Flowers Movement", for protesting the suppression of counterrevolutionaries, the existence of privilege and the lack of democracy.

Wand Mingdao: a Protestant minister imprisoned since 1957 because of his religious beliefs, especially his defense of the church's independence from the state.

Chamba Logsang: a Tibetan monk arrested in 1959 on charges of exploiting the masses in the name of religion.

Deng Qingshan: a 26 year old peasant worker arrested in 1970 because of a frame up. The official charges were "slandering Chairman Mao" between 1967 and 1969, but the trial proceedings were a farce.

Li Zhentian (Li Cheng-tien): a former Red Guard who was imprisoned for criticizing the government in a wall poster.

Is the Chinese Gulag an aberration, an unfortunate development that is not crucial to the functioning of the Communist state? If one examines the thought of Mao Tse-tung, especially volume five of his *Selected Works,* it becomes obvious that systematic terror is a fundamental part of the socialist revolution. Thus the Chinese Gulag is a necessary component of this revolution. In his essay "In Suppressing the Counterrevolution One Must Hit Steadily, Accurately, Without Mercy," Mao explains what he means by this. "To hit steadily means to pay attention to the policy. To hit accurately means not to kill the wrong men. To hit without mercy means to kill resolutely all reactionaries who must be killed."

The number of people who would be subjected to this policy of extermination is mind numbing. "It can be estimated that the proportion of those who must be killed among the counterrevolutionaries in Party, Government, Army, in the educational field, in the economic field, in the mass organizations, those who have a blood debt or other causes inviting the anger of the masses or have done grave harm to the State, should be 10 to 20%". In April 1956 Mao gave a speech "On the Ten Great Relations", the seventh of which dealt with the counterrevolution. Here he expained that "counterrevolutionaries are worthless; they are vermin, but when they are in your hands, you can make them perform some kind of service for the people." Later that same year, at the Second Plenum of the Eighth Central Committee, Mao asked himself,

Should local bullies, evil despots and counterrevolutionaries be

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killed or not? They must be killed. Some democratic gentlemen say that killing is wrong. We say killing is good . . . if we do not kill the "small Chiang Kai Sheks" then the earth will keep on trembling under our feet and we shall be unable to release production force or to liberate the laboring people.

One could continue to quote these barbarous monstrosities from the mouth of Chairman Mao; his *Selected Works* are full of them. But, lest we be accused of being too harsh on Marxism, one further quotation is necessary. In October

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China's Vice Chairman Teng Hsiao-p'ing delivering the closing speech at the 11th National Congress of the Communist Party of China, Fall 1978.

1955, at the Sixth Plenum of the Seventh Central Committee, Mao himself made the connection between Marxism and murder:

> In this matter [past purges and the final extinction of capitalism] we have no conscience! Marxism is rough, it has little conscience. It wants to extirpate imperialism, feudalism, capitalism and small producers. In this matter it is good to have little conscience. We have some comrades who are too gentle, not severe, in other words, they are not very Marxist.

It is extremely difficult to estimate the number of people who have been imprisoned, executed, or otherwise victimized in the People's Republic of China. The original unpublished version of Mao's speech "On the Correct Handling of Contradictions Among the People", delivered on the 17th of February 1957, gives a figure of 800,000 executions up to 1954. Edgar Snow's *Red Star Today, the Other Side of the River,* states that 10 million people, "unrehabilitated class enemies," were not permitted to vote in the 1954 National People's Congress elections.

Since the 1949 revolution, the following events have taken a huge toll in lives and in loss of freedom for the Chinese people: (1) 1949–1952: The elimination of counterrevolutionaries, the land reform program, the "Three Antis" and "Five Antis" campaigns, resulting in a total of five million executions; (2) the 1957 Anti-Rightest Campaign: figures given by the Minister for Public Security for June to October of that year alone indicate that 100,000 counterrevolutionaries and bad elements were "unmasked and dealt with," as the Chinese so charmingly put it; at one point seven million were investigated by the police and several million were sent into the countryside for "re-education"; (3) 1966–1969: The Cultural Revolution: in Mao's last interview with Edgar Snow he admitted that Western journalists had grossly underestimated the extent of violence; Han Suyin admits at least 90,000 victims in Szechuan province and Li I-che gives 40,000 in Kwangtung who died because of Lin Piao's repression; (4) the Anti Lin Piao Campaign and Anti Confucius Campaign of 1973–1975, and the campaign for the Denunciation of the Gang of Four (1976–1978): executions have been announced by the Chinese press but no figures are available; these campaigns have exposed the atrocities committed by those being denounced; the Gang of Four especially have been denounced for repression, imprisonment and murder of their political opponents; (5) The T'ien An Men demonstration of April 5, 1976: one hundred thousand demonstrators in Peking were brutally repressed; three thousand were arrested on the spot, 100 killed by Wu Teh's police, and 40,000 were later arrested in connection with the demonstration.

Constitutional protections—for the ruling class

The Chinese people have no protection under their constitution. The new constitution, adopted on March 5th, 1978, remains a document specifically designed to protect the ruling class from subversion from below. It guarantees no rights because it asserts the duty of all citizens to support the party: "Citizens must support the leadership of the Chinese Communist Party, support the socialist system, safeguard the unification of the motherland and the unity of all nationalities in our country and abide by the constitution and the law" (Article 56).

Article 18 of the new constitution is quite open about suppressing all who dissent and all who oppose the socialist state:

> The State safeguards the socialist system, suppresses all treasonable and counterrevolutionary activities, punishes all traitors and counterrevolutionaries, and punishes all new-born bourgeois elements and other bad elements. The State deprives of political rights, as prescribed by law, those landlords, rich peasants and reactionary capitalists who have not yet been reformed, and at the same time provides them the opportunity to earn a living so that they may be reformed through labor and become law abiding citizens supporting themselves by their own labor.

Ironically, the criticism the official Chinese press made of the 1977 Soviet constitution applies equally well to their own: "The text of the Constitution proclaims rights and freedoms of every kind for citizens; but it immediately adds: 'Citizens cannot use their rights and freedoms if this would infringe the interests of Socialism or of the State,' words serving to oppress the many exploited people who resist the new Tsars" (quoted in *China News Analysis* March 24, 1978).

The 1978 constitution adds that new-born bourgeois elements will also be the target of systematic repression. This new category of class enemy will permit the Chinese state to "reform", imprison or execute even larger numbers of people. The new class enemy is defined as anyone who resists the socialist revolution, endangers socialist construction, seriously damages socialist common property, embezzles society's wealth or commits criminal acts.

The court system offers no protection to the individual either, since "laws have to be administered according to the policies of the State, and it is the Communist Party which is the most capable of deciding such policies in the interest of all the People" (Communist official Wu Te Feng, "On the Preservation of the Socialist Legal System", January 1958). The courts are empowered to impose penalties such as

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"supervised work" or work "under supervision of the masses" where offenders remain in society; "rehabilitation through labor" where offenders are sent to special camps; "control" which is similar to "supervision" but is applied to unreformed elements who are guilty of administrative crimes rather than criminal offenses; imprisonment by "reform through labor" in a special labor camp; life imprisonment in a camp; death penalty suspended for two years during which time the offender is imprisoned and must show reform before the sentence is suspended completely; and immediate execution.

Amnesty International gives some examples of people executed for political offenses. In March 1977 the High People's Court of Shanghai sentenced 26 criminals to death, two of whom were political offenders. One hampered criticism of the Gang of Four; the other opposed the policy of sending youths into the country after graduation from high school. In May 1977, in Shenyang province, a 24 year old man was executed for having formed his own political party, having tuned into an enemy radio station, and having attempted to reach the Soviet border. In September 1977 in Yunnan province, 23 people were executed for distributing counterrevolutionary literature and for forming counterrevolutionary groups. In February 1978 He Chunshu was executed in Canton for printing and distributing a counterrevolutionary leaflet. The court said:

> After he became a teacher in 1956, he maintained a reactionary attitude, deeply hated our party and socialist system. In 1963, he started secretly writing a large number of counterrevolutionary articles. After the Great Proletarian Cultural Revolution started, the criminal He frantically engaged in counterrevolutionary sabotage activities; he wrote and stencilled a counterrevolutionary leaflet of more than 200,000 words containing counterrevolutionary articles; using the names of 7 counterrevolutionary organizations, he mailed it to soviet revisionists, American imperialists, reactionary Hong Kong newspapers, to some foreign consulates and embassies in China, to institutions and press organizations in our country. . . . [In it] he viciously attacked our great leader and teacher . . . the political campaigns launched by our party, he attacked the Proletarian Culture Revolution, the dictatorship of the proletariat; he greatly praised social imperialism, spread his counterrevolutionary ideas, foolishly tried to overthrow the dictatorship of the proletariat and to restore capitalism.

What is inspiring about this is that in spite of the dangers of protest, men and women in China like He Chunshu are opposing the Communist regime by distributing literature, organizing protest groups, fleeing to Hong Kong, organizing political parties and even forming revolutionary armies. As Amnesty International writes, "another group was accused . . . of having procured arms and forced people by armed threat to supply it with provisions." It seems impossible to stifle the craving for liberty, even in such an authoritarian state as China.

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The fifth People's Congress of China, convened one month before adoption of the new Chinese constitution, which legitimates the ruthless suppression of all who dissent.

Libertarian wall posters

A similar craving animates the amazing wall poster "Concerning Socialist Democracy and the Legal System" by Li I-che. The final draft was completed on November 7, 1974, and was pasted up on a wall over 100 yards long. The authors—Li Cheng-tien, Chen I-yang and Huang Hsi-che—were former Red Guards who opposed privilege, the new class, ritualized and empty politics, prison camps, torture and massacres, and even the decline of the rule of law. They advocated a return to the rule of law, the observance of human and democratic rights and a move toward an economic system in which the workers should keep more of the product of their labor. The new class arose, they argued, because

> some leaders have expanded this necessary preferential treatment granted by the party and the people into political and economic special privileges, and then extended them boundlessly to their families and clansmen, relatives and friends . . . [and] to maintain their vested privileges and obtain more preferential treatment, [they] attack the upright revolutionary comrades who insist on principles, suppress the masses who rise to oppose their special privileges, and illegally deprive these comrades and masses of their political rights and economic interests.

The people, they wrote, "demand democracy; they demand a socialist legal system; and they demand the revolutionary rights and the human rights which protect the masses of the people." The authors predicted "a mass move-

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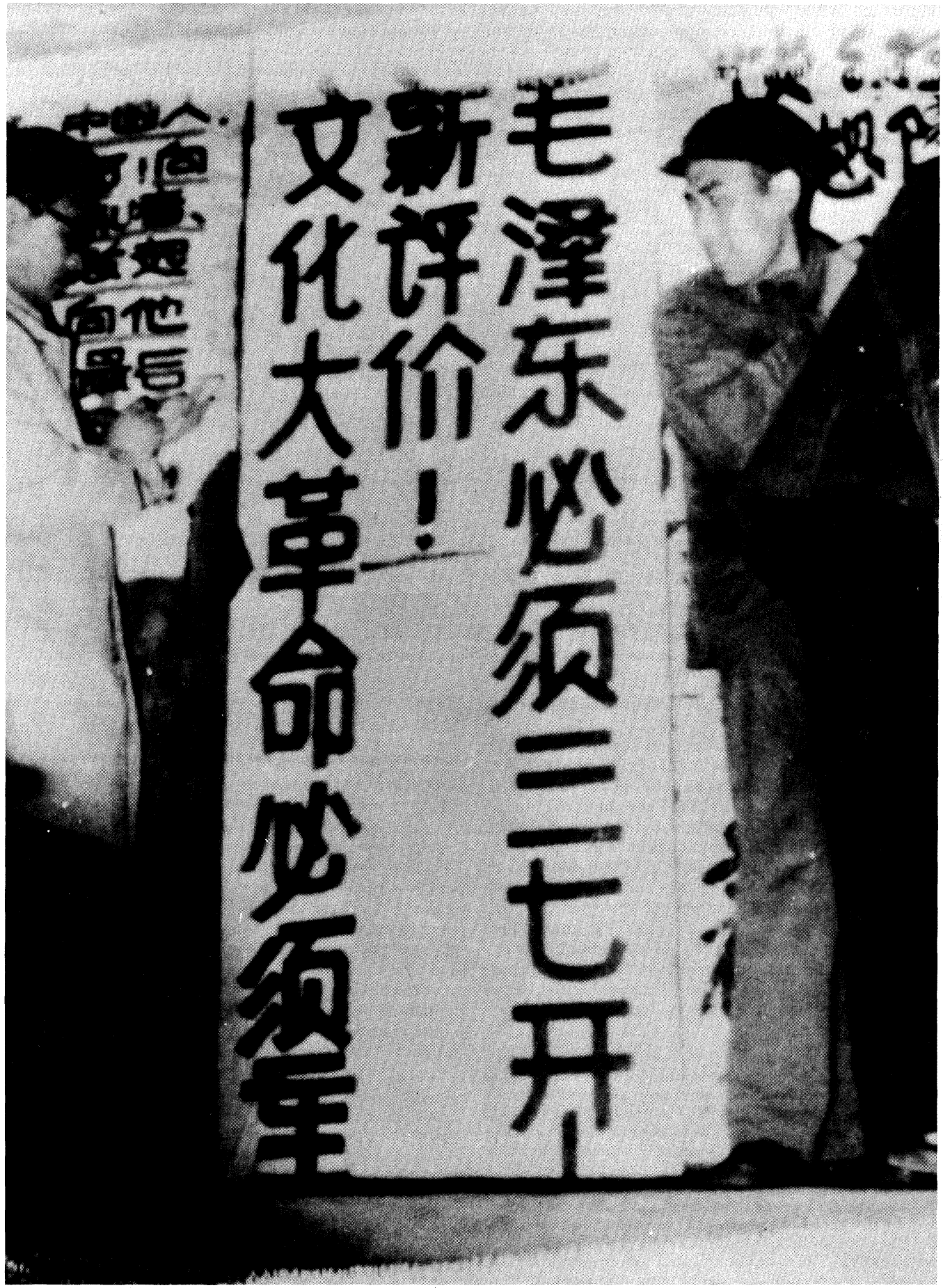

UPI

Chinese wall posters are becoming more and more explicitly libertarian. Early in January, *Time* magazine reported that a 29 page poster published in Shanghai was quoting "liberally from the American Declaration of Independence, concluding that 'if the government abuses people's rights, the people have the right to abolish the government and create a new one.'"

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ment to thoroughly destroy the Lin Piao system [the name they gave to the oppressive Chinese government] [which] will come in the not too remote future [and] will restore and develop all the spirits of the first Great Proletarian Cultural Revolution." Of special interest to libertarians is the poster writers' belief that "power is the most corruptive agent of men," and that "state power is the power to suppress."

The result of this opposition to the communist State was arrest, imprisonment and execution. In the spring of 1975 Li was sentenced to "work under supervision" in a mine in North Kwangtung. In early 1977 the sentence had been changed to life imprisonment. Simon Leys has recently written that an unconfirmed report states that Li was subsequently executed for his "crimes" ("Human Rights in China", *Quadrant,* November 1978).

The limited freedom of expression that exists in China (Article 45: "to speak out freely, air views freely, hold great debates and write big character posters") is valid only as long as one agrees with the party line. Article 56 of the new constitution renders the entire concept of "constitutional rights" meaningless, since, "the citizens must give their support to the leadership of the Chinese Communist Party". But occasionally the ruling elite finds it expedient to relax the controls on expression in order to flush out opponents—just as the Shah of Iran does. In an officially sanctioned book, *Questions and Answers on the Constitution of the People's Republic of China,* it is explicitly stated that freedom of speech is necessary "in order to unmask counterrevolutionaries . . . to expose alien class elements and degenerate elements."

Imprisonment or execution awaits those who have the courage to oppose the Chinese State, and China is well provisioned to deal with them. Very few details are available, but one Western source believes that there were 297 Chinese places of detention in 1958. These included detention centers, corrective centers for juvenile offenders, corrective labor camps, and prisons in factories and workshops. In the northeast of China, prisoners have been sent out to create farms and factories out of the wilderness. Between 1954 and 1972, 60 to 70 percent of all state farms in that region were penal institutions. In Heilongjiang province a complex of labor camps was created between 1953 and 1955, one of which, Xingkaihu, held 40,000 prisoners. Prisoners were forced to work in the harshest of conditions. The average temperature in this camp between November and March is minus 40 degrees Centigrade, and prisoners only stopped work if the wind was "too strong". Other camps are in west Heilongjiang province (the Zhalaiteqi camp holding 40,000 prisoners), Inner Mongolia, the Uighur Autonomous Region of Xinjiang, Tibet (Lakes Nagtsang and Pongong, Lhokha, Lhasa) and numerous camps around and in Peking.

The treatment of prisoners varies from prison to prison and appears to be quite arbitrary, depending more on the whim of the individual prison officials than on any established legal procedure. For example, a prisoner may be punished

> at any time for minor "misconduct": reduction of food rations for a short period; temporary loss of the right to receive visits, parcels or correspondence; loss of small privileges (pocket money, shopping); being forbidden temporarily to read newspapers or books or participate in cultural activities; subjection to either criticism meetings followed by oral or written self-criticism or in more serious cases, to a "struggle" meeting" (Amnesty Report).

Chains and fetters are still commonly used to restrain prisoners. One prisoner claims that he was forced to wear heavy fetters for five years between 1951 and 1956. Bao Ruo-wang describes a prisoner whose

> feet were in fetters, an iron bar a foot long, ringed at both ends to pass around the ankles. Bolts held the rings fast; two chains rose from the middle of the bar to the wrists, which themselves were joined by another chain. In all, the outfit weighed 32 pounds. The prisoner was obliged to carry the vertical chain from his feet looped several times, since it was long enough to drag on the floor and that was forbidden (*Prisoner of Mao*).

Prisoners who refuse to "reform" themselves are subjected to a "struggle session". Bao describes this as a "peculiarly Chinese invention, combining intimidation, humiliation and sheer exhaustion. Briefly described, it is an intellectual gang beating of one man by many, sometimes even thousands, in which the victim has no defense, even the truth." The rules which govern a prisoner's life are printed on a little card and attached to the wall of each cell. They were designed to prevent any strong relationships developing between prisoners. As long as prisoners distrust each other they cannot organize against the prison authorities. A communist cadre admitted to Bao that "the one thing communists feared most was human sentiment between individuals. It was the one thing they could never entirely control, and it could make for dangerously conflicting loyalties."

One of the most intriguing aspects of *Prisoner of Mao* is the way in which the prisoners, like the Negro slaves in the South, adapt their behavior to suit the authorities. While retaining their personalities virtually intact behind a submissive front, they sabotage the "socialist revolution" by goldbricking and ridiculing authority. Yet, eventually the system proves too strong and the prisoners' resolve, their individuality, begins to weaken under the constant watching, starvation and moral pressure of their fellow prisoners. They begin to love their oppressors, to feel "gratitude" to the state for its generosity in trying to reform them, worthless as they know they are. Bao describes one prisoner who was released after many years but who begged to be readmitted because his family refused to have him back. His record of "crimes against the state" made it impossible for him to get any employment or even to live with his family in his native town. The state had destroyed his life outside of the prison system.

To what extent the recent liberalization of Chinese life will affect the Chinese Gulag is yet to be determined. It is my belief that a fundamental change in the totalitarian nature of the Chinese state will have to occur before the Gulag is dismantled and the dissidents are released. In an economy stifled by controls and having to support millions of parasites—party cadres, bureaucrats and the military—slave labor is very valuable and the prison system provides a cheap source of docile labor. It is still dangerous for the Chinese ruling class to risk exposing itself to extensive criticism, so the Gulag will remain until such time as the elite thinks itself safe or until the Chinese people rise up and overthrow their masters in another, perhaps this time libertarian, revolution. Before they will be able to do this, the Chinese (and for that matter the entire human race) will have to overcome their habitual obedience to authority. In the words of Li I-che:

> The feudal rule which continued for more than 2,000 years has left its ideology deeply rooted. A destructive blow has not been dealt to it in either the period of old democracy nor in the period of new democracy. The bad habits of autocracy and despotism are deeply imbued in the minds of the masses, even in those of the Communists in general (*Concerning Socialist Legality*). ❑

David Hart, of the history department of Macquarie University in Sydney, Australia, wrote this essay during a recent extended vacation in the United States.

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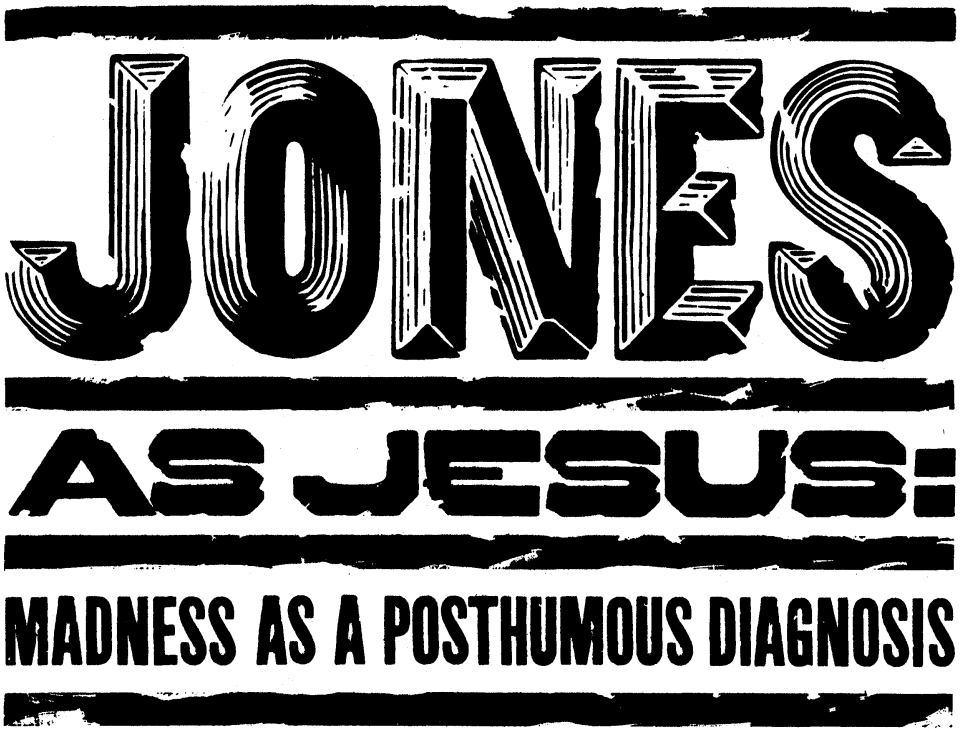

THOMAS S. SZASZ

Until recently, people knew a madman when they saw one. Or they thought they did. They also knew what to do with a madman: they put him behind bars, usually for life. Now, for the first time in modern history, there is some reason to believe that the long night of the psychiatric Dark Ages is coming to an end.

Although neither psychiatrists nor laymen could ever satisfactorily define sanity, they all knew that if a person claims to be Jesus, then he is mad—insane, psychotic, schizophrenic, whatever. But crazy, for sure. Similarly, although no one could clearly define the criteria for commitment to an insane asylum, everyone knew that if a person announces that he is going to kill himself, then he ought to be locked up—to protect him from himself, to cure his psychosis or schizophrenia or whatever. Ernest Hemingway, for example, was locked up and given electric shock treatments against his will for precisely such reasons.

For several years before the carnage in Guyana, the Reverend Jim Jones repeatedly claimed that he was Jesus. He also repeatedly threatened to kill himself—and to take his followers with him in a mass suicide—if people didn't do as he told them. Many knew that Jim Jones made such a claim about himself and uttered such a threat against others. Many who knew this were intelligent and influential persons, some of them physicians and lawyers. But not one of them said that Jones was mad or suggested that he ought to be committed to a mental hospital.

Why didn't anyone "discover" that Jones was "mentally ill" before he died, especially since that "diagnosis" seems now so obvious to everyone? Because he had powerful political friends? That cannot explain it. Secretary of Defense James Forrestal had much more powerful political friends and sought only his own death, whereas the Rev. Jones sought the death of his family and followers as well. Nevertheless, Forrestal was captured, confined, and psychiatrically destroyed, but Jones was not.

Did Jim Jones escape psychiatric diagnosis and detention because he made a good impression on people? That cannot explain it either. Marilyn Monroe made a much better impression, but was made to suffer the indignity of involuntary mental hospitalization nevertheless.

The answer, I think, is simple. The American people—and, most importantly, journalists and judges and politicians—have opened their eyes and ears and are beginning to look at and listen to madmen as well as mad-doctors. When Jones declared that he *was* Jesus, people interpreted this to mean that he wanted to be *like* Him, that he wanted to be admired *like* he is, and so forth. This view of madness is both a cause and a consequence of a dramatic shift in the public perception of madness and the public policy toward it (each affecting the other).

Until recently, when madmen asserted certain (possibly) metaphorical claims, their assertions were invariably interpreted literally. If the "patient" said he was Jesus, then

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everyone insisted that that is what he meant; *ergo*, he was crazy. It was of no avail if the "patient" subsequently explained, in word and deed, that what he *really* meant was that he wanted love, fame, respect, and all the other spiritual "goods" that many crave but few obtain. He was crazy, and that was that.

Now the tables are turned. Jones says he is Jesus. We don't know, we cannot possibly know, whether he meant that claim literally or figuratively (or both). But everyone—the public, journalists, politicians—acted as if Jones were asserting a metaphorical claim; *ergo*, he was not crazy. The more Jones escalated his claims, the more "charismatic" (confident)—and the less "crazy" (deluded)—he appeared. Indeed, even in his penultimate performance, one could not distinguish the literal from the metaphorical, the real from the fake, from what Jones said. The truth about Jones became known only after the bodies were counted. Then, the chorus called him crazy.

"Why," asks Patrick J. Buchanan uncomprehendingly, "wasn't the Secret Service alerted to keep Mrs. Carter miles away from a certifiable madman like the Rev. Jim Jones?" What Buchanan does not understand, perhaps does not want to understand, is that whether a person is considered mad depends not on what he does but on how we interpret what he does. For a number of reasons (among which the changing attitude toward madness is probably only one), Jones's self-definition as Jesus was regarded as a symbol of his "humanitarianism"—rather than as a symptom of his megalomania; similarly, his rituals of mass suicide were viewed as the thunderings of an angry prophet—rather than as the blackmailings of a blood-thirsty terrorist.

President and Mrs. Carter say that they are "born-again" Christians. We interpret that claim metaphorically—and either approve it or ignore it. But what if we gave that message a literal reading? We might then expect each of them to produce two birth certificates to substantiate their claim or to die twice before we bury them. Clearly, if we gave such a claim a literal interpretation (and had the power to implement it), then the claim of having been born more than once would be called a delusion symptomatic of a psychosis. The Carters' claim that they are born-again Christians is not likely to be so (mis)interpreted. But the analogous claims of countless other persons have been (mis)interpreted in just such a way. Some years ago, after one of my public lectures in which I made this point, a colleague came up to me and told me this story. As a supervising psychiatrist in a state mental hospital, he was asked to review a recent admission. The patient was a middle-aged woman who had complained of intense anxiety. In the admission record she was described as "delusional" and was diagnosed "psychotic." When the patient said nothing to the consultant that he considered "delusional," he turned to the admitting psychiatrist, who was a recent immigrant from Eastern Europe, for an explanation. "She kept saying she had butterflies in her stomach," replied the doctor, who might have been a poet in his native tongue but was deaf to the music of a metaphoric butterfly fluttering in an English-speaking stomach.

"All the world's a stage," observed Shakespeare. He is right. Poetry, politics, and psychiatry all come down to language—to the ancient truth which we forget at our own peril: namely, that it is by controlling words that we control men. Let us rejoice at the prospect of a world freed of its psychiatric blinders. Perhaps the time is now near when madness will be a purely posthumous diagnosis. That day will be a new dawn for liberty. ❑

Thomas S. Szasz is professor of psychiatry at the State University of New York's Upstate Medical Center in Syracuse, and a contributing editor of *Inquiry*. He has long been a leader in the fight against involuntary mental hospitalization. His many books include *The Myth of Mental Illness*, *The Theology of Medicine*, *Schizophrenia*, and, most recently, *The Myth of Psychotherapy*.

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AFFIRMATIVE ACTION: QUOTA TO END ALL QUOTAS?

MILTON MUELLER

It's a windy day, and the young black woman holds onto her leaflets tightly. As she passes them out, they rattle in the wind so strongly that the big, black headline is barely legible: "Smash Racism; Reverse the Bakke Decision." The headline is bold, the rhetoric strident. But an earnest conversation with her reveals a strange ambivalence about affirmative action.

"Racial quotas aren't really the main issue," she says. "It's the attack on minorities, and economic progress, that we're concerned about. Minorities have been excluded for so long—it's time to assure them a chance."

"Do you think," she is asked, "affirmative action holds the key to economic advancement for minorities?"

"Oh, no." She rolls her eyes upward as if the answer is self-evident.

"Do you think affirmative action programs have helped minorities much since they've been in existence?"

She shrugs. "Some. Not much."

"What about the backlash created by quotas—wasn't it inevitable that excluded whites like Bakke or Weber would blame minorities for their exclusion? Why should they have to pay for discrimination they had nothing to do with?"

"Look," she answers, "reverse discrimination cases are being used to attack the few advances minorities have made. Affirmative action is no big deal—but at this stage, it's all we got."

This woman, like a growing number of others, seems to sense that affirmative action is a phony issue. But for most, it is different. Somehow, affirmative action has come to represent our nation's commitment to economic advancement for minorities. If this perception of affirmative action can survive the current onslaught of reverse discrimination cases, such as the Kaiser Aluminum lawsuit recently accepted by the Supreme Court, then the ruling elite will have ostentatiously put a band-aid over a gaping wound—and gotten away with it.

It is ironic that affirmative action has come to symbolize the economic aspirations of minorities. The income of blacks relative to whites actually reached its highest level before affirmative action programs existed, and has remained steady since. Even more significantly, those vaunted economic gains made by blacks are actually confined to one very distinct group: the educated, middle class minority. For the rest of the black population—the teenagers, the unskilled and older workers, the families mired in the coils of the welfare system—the situation may well be *worse* now than it was during the civil rights movement. Unemployment among teenage blacks was 23 percent in 1964—today, it is stuck at a staggering 45 percent. During the same 15 years, the percentage of non-whites in the labor force has steadily shrunk, even though their proportion of the population has grown. This decline is most noticeable in the case of black men age 45 to 54; those out of the labor force have increased nine percent. But it is also true of younger blacks age 25 to 34; those in that bracket now out of the labor force have increased 6 percent. The bald fact is, fewer blacks are working than ever, and the decline for blacks is greater than that experienced by whites.

Affirmative action has not changed this. It has only snatched up the cream of the crop—the blacks and minorities from the best home backgrounds and higher-income families—and assured them a place in the system. Indeed, the intense competition for qualified minority applicants among universities often has the perverse effect of putting top-notch black students, whose test scores place them in the top 25% of all American college students, in an academic environment in which they are surrounded by students from the top *1 percent*. As one black critic of preferential admissions put it, "thousands of minority students who would normally qualify for good, non-prestigious colleges where they could succeed, are instead enrolled in famous institutions where they fail."

Other than that, the only accomplishment of affirmative action is its pitting of blacks against whites, men against women, and minorities against the majority in a bitter and

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ugly scramble for a piece of an artificially small pie.

The obvious injustice of racial quotas has made it possible for the majority to overlook the very real and pressing issue of the economic advancement of minorities. At the same time, many minority group members have been co-opted by the new tokenism of affirmative action, while the economic issues at the heart of the problem have faded into the background.

What is the real issue behind Bakke, the Kaiser Aluminum suit, and affirmative action? Stephanie Cleverdon, writing in the December 1977 issue of *The Progressive*, indicated an answer:

> Allan Bakke, son of a mailman and a teacher, will not easily let go of his dream of being a doctor. Neither will the minority candidates who have been excluded from professional schools for so long. But neither he nor they nor most of the impassioned advocates have focused on the central fact that there just are not enough places to go around. The 26,000 applications rejected, out of 40,000 submitted, attest to that. . . . No matter what the court decides, the solution will not address the underlying question—not just "Who gets in?" but "Why isn't there room for more?"

Why *isn't* there room for more? What is the reason for a system in which blacks can rise only at the expense of whites, a system in which minorities can be assured a place only by arbitrarily and unjustly excluding a Bakke or a DeFunis or a Weber? The answers to these questions go to the heart of the way our economy now functions.

The medical monopoly

It is no accident that the first pitched battle over affirmative action occurred over admission to a medical school. The medical profession is an especially glaring illustration of the kind of state-regulated, government-controlled economy we live in. The fact is, the State, acting at the behest of the medical profession, has deliberately restricted the amount of medical education available—at the same time that doctors are needed everywhere. There were more medical schools in 1900 than there are now. Why?

To understand the irrational scarcity prevailing in medicine—and therefore the Bakke case—we have to go back to 1847, the year the American Medical Association (AMA) was founded.

One hundred thirty years ago, medicine was pretty much a free market business like any other. No license was necessary to practice, although you could be sued for fraud or malpractice if you didn't know your business. Diverse, competing forms of medicine flourished, and many private medical schools were formed. The AMA was created by so-called "regular" doctors to transform this free-wheeling market. Their aim was to reduce the number of doctors available, eliminate competition from "unofficial" forms of medicine (like naturopathy and acupuncture, and, in later years, osteopathy and chiropractic), and thus increase their profits and control of the market. (The "regular" doctors of 1850, by the way, relied on a bizarre assortment of therapies such as bloodletting, blistering, and the administration of mineral poisons—techniques the average citizen viewed with a healthy skepticism and mistrust.)

To limit competition, the AMA relied on that old friend of monopolists, Uncle Sam. The first weapons were government licensing and certification laws. Anyone practicing medicine had to have a license—and to qualify for a license, a potential doctor had to get a degree from a certified medical school. And, needless to say, the government certified medical schools on the basis of standards written and lobbied for by the AMA.

The purpose of this government intervention, it must be stressed, was not to improve medical care but to *reduce the supply of doctors*. Fewer doctors entering the market guarantees higher incomes for established physicians, whereas a free market would let in a constant stream of competitors who might (horrors!) *charge less* to attract business.

"The only accomplishment of affirmative action is the pitting of blacks against whites, men against women, and minorities against the majority."

The AMA's monopolistic goals were accomplished with grim efficiency over a period of fifty years. By 1938, the number of doctors entering the market was no longer determined by the laws of supply and demand, but by the standards set by the AMA and enforced by the state. In 1904, for example, there were 160 medical schools in the U.S., nearly all of them private. That same year, the AMA decided that fully 79 of them were "unacceptable" and many were forced to close. In 1915 there were only 95 medical schools, and today, after a continuous tightening of government standards, only 76 medical schools remain. Moreover, since 1915, enrollments in these schools have been held to an artificially low level.

And the unconscious racism of this kind of government restriction of the market was clearly reflected in the effect on black medical schools. In 1910, there were seven black medical schools. One year later, after tougher standards were enforced, only two black medical schools were left.

The stage for the Bakke case had been set. The AMA had realized its goal of a highly controlled, scarce medical market. The number of doctors trained was severely limited by law; thousands who wanted to become doctors (and were needed as doctors) could not be accomodated. To weed out the applicants, *artificial* standards such as academic scores and written tests were used. These standards acted to exclude minorities, who were fully capable of competing in the *market*—but not in the arbitrary world of test scores and I.Q. ratings.

Thus we are led to the question posed by Cleverdon:

> Did Allan Bakke deserve to get into medical school more than the sixteen minority students who were admitted instead of him? Anyone familiar with admissions procedures at a school with twenty or thirty applicants for every place knows it is impossible to answer such a question. Many of the applicants were qualified to become excellent doctors; indeed, in a nation as short of physicians as ours, it is criminal to turn away so many eager, competent applicants.

In a free market with unrestricted entry, what matters is performance: the ability to attract and satisfy customers. In a government cartel, on the other hand, artificial standards are the name of the game: I.Q. tests, grade point averages, and all the other classifying and sorting devices of a bureaucratic "society of status." Whether intentionally or not, this reliance on non-market standards inevitably protects the

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advantage of established groups at the expense of newcomers like minorities or immigrants.

The kaiser case

The same kind of regulation and control of the market that excluded minorities from medical school can also be seen in the recent Kaiser Aluminum affirmative action clash. In 1974 Kaiser Aluminum and Chemical Corp. negotiated a contract with the United Steelworkers Union establishing an affirmative action program giving minorities half of all positions in a nationwide training program for skilled craft jobs. Given the realities of NLRB regulations and Equal Employment Opportunity Commission lawsuits under the Civil Rights Act, it is naive for libertarians to refer to the program, as they sometimes do, as a "voluntary" one. In this economy, very few labor practices are voluntary anymore—which is precisely the cause of the problem.

It is more instructive, therefore, to look at the economic underpinnings of the issue rather than at the question of whether Kaiser has the right to discriminate in favor of minorities in their training program. Why did Kaiser find it necessary to set rigid quotas to attract enough minorities into their program? Why is it so hard to get minorities into skilled positions?

The answer is suggested by the *L.A. Times* coverage of the case. Weber, a white worker at the Gramercy, Louisiana Kaiser aluminum plant, applied for a position in the program and was turned down. Weber claims, according to the *Times*, "he would have qualified if applicants had been selected on the basis of *seniority*" (emphasis added).

Seniority in promotions, it turns out, is one of the many hiring regulations unions fought for—and won—earlier in this century. Like the AMA standards discussed before, such regulations were often designed to protect the economic advantage of *established* workers to the exclusion of newcomers. An employer on a free market tends not to care about seniority, but about productivity. But a union-demanded seniority system substitutes union power for productivity as the basis of promotion. Unions are concerned about protecting the status of those who already have jobs, not about opening up opportunities for those who don't. Likewise, an employer might be more than eager to hire discriminated-against blacks because they are likely to work for less pay than whites. A union-demanded minimum wage undercuts the chance for minorities to work for less—thus eliminating their competition with vicious effectiveness. In 1948, there was *less* teenage unemployment among blacks than among whites. Every increase in the minimum wage rate since then has been accompanied by an increase in the black teenage unemployment rate relative to whites. In South Africa, the white racist unions don't make any bones about their intentions—they push for minimum wages and "equal pay for equal work" laws in order to exclude skilled blacks who are willing to work for less.

In the same vein, when professional associations or unions require applicants for jobs to possess a degree or diploma, or to pass a written test or civil service exam, they screen out minorities, immigrants, and other newcomers in favor of wealthier, more educated applicants. The black UCLA economist Thomas Sowell has explored this phenomenon in his landmark book, *Race and Economics*. In the past, when markets and firms were less controlled and structured, Sowell points out, practically everyone was "employable." "Those who were more productive earned more, those who were less productive earned less; those judged promotable could be promoted and those judged unpromotable could be left where they were—but still working." However, now that jobs are standardized by formal entry requirements, promotion regulations, union rules, and standardized pay, it is not worth it for an employer to hire

LESLEE J. NEWMAN

"The bald fact is, fewer blacks are working than ever, and the decline for blacks is greater than for whites—despite affirmative action."

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any but the most productive employees. As Sowell puts it,

> The net effect of all this is that, where a poor 19th century worker without skills or experience could find a job to support himself, and could later rise or at least see his children rise, his twentieth century counterpart with similar background must *immediately* be worth high wages and show promotions prospects or face a serious risk of having no steady job at all.

Thus is the door to economic advancement taken by nineteenth century immigrants slammed shut to contemporary minorities and poor people.

Placed in this context, it is easy to see why there are so few minorities entering the skilled labor market. It becomes clear why Kaiser and the United Steelworkers found it necessary to form a special program to recruit and train minorities. It becomes clear why medical schools *have* to set aside quotas for minorities. And it suddenly becomes comprehensible why the economic progress of blacks has been largely confined to those from well-educated or higher-income families, leaving behind obscenely high teenage unemployment rates and fewer blacks of all ages participating in the labor force.

The last straw?

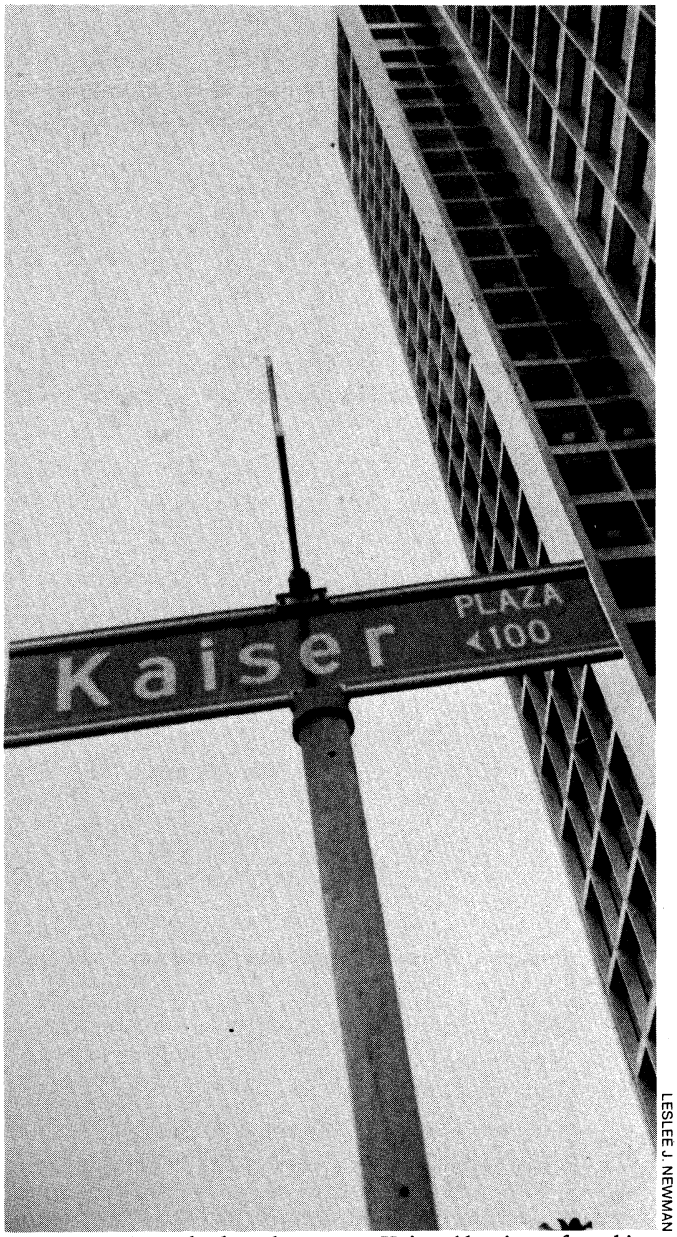
Affirmative action is the last gasp of a crumbling economic system. The network of cartels, controls and quotas that have been piled up for decades—which ineluctably act to exclude poor minorities—is now forced by political realities to add one more quota. Affirmative action is not a battle over a unique, special privilege demanded by minorities; rather, it is a battle between *different and conflicting kinds* of economic privilege. The AMA has its "quota"—one that has excluded women and minorities for years. Labor unions, too, have their "quotas"—seniority, minimum wages, featherbedding, and other practices—which likewise have excluded minorities for years. Now minorities are demanding their own quota—and the interventionist economy is reaping what it has sown. If the quota is fully implemented, of course, it will be Allan Bakke and Brian Weber who will pay—not the real culprits.

But this final quota, added to all the others, may well be the straw that breaks the camel's back. The white majority is not going to stand back and let itself be excluded. For every reverse discrimination suit that gains national prominence there are several more settled in the lower courts—which usually rule against blatant reverse discrimination. And each such success only heightens the contradictions of the economic system. Half the legal system is exerting strong pressure for affirmative action, while the other half is making it illegal.

From the perspective of the establishment, affirmative action is the best of all possible worlds. It co-opts the minorities' burning desire for economic progress while artfully evading the *causes* of their exclusion. In a world where cartels, regulations, exams, minimum wages, degrees and diplomas continually block advancement, affirmative action is an attempt to preserve the status quo by slapping another regulation on top of it all. It assumes, in effect, that all minorities need is another government program and their needs will be taken care of.

But if special exceptions and special laws are necessary to bulldoze minorities into the system, then something is clearly wrong with the *system*. If the regulations that burden the economy are so intrinsically racist that quotas are the only way to get minorities in, then something is wrong with the regulations. The attempt of affirmative action to gloss this over is failing. The white majority won't accept it, and minorities are growing increasingly impatient for change.

There is an approach that can reconcile both Allan Bakke and his minority competitors. The aim of minorities seeking economic progress should not be the futile one of racial quotas—but the revolutionary one of wiping out the cartels,



LESLEE J. NEWMAN

"It is instructive to look at the reasons Kaiser Aluminum found it necessary to set rigid quotas—now under challenge in the U.S. Supreme Court—to attract enough minorities."

government regulations, and other economic roadblocks that limit their entry into the economic arena. A government-controlled economy is a static economy—the people on the bottom stay there. If the energies of a free, unrestricted economy are released, if the roadblocks are blown away, then minorities—and the rest of society—can advance.

The black woman passing out anti-Bakke leaflets will not, it is to be hoped, continue to think of Allan Bakke as the "enemy." For if the economic issues were understood, both she and Bakke could unite as enemies of the state. ❑

Milton Mueller is executive director of Students for a Libertarian Society. His regular column, "The Movement", will resume next month.

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BOOKS AND THE ARTS

On "baby selling"

WALTER BLOCK

Baby Selling, *by Nancy C. Baker. Vanguard Press, 206 pp., $8.95*

THERE IS PERhaps no arena of human endeavor which combines as much pain and delight as that of child adoption. People's hopes and dreams, their quest for some measure of immortality, their feelings of inadequacy, are all involved in the decision to adopt a baby. How tragic it is then, that this process should be burdened with an extraneous, artificial, and unnecessary element of danger and heartbreak.

The problems which plague adoption are given eloquent treatment by Nancy C. Baker in her *Baby Selling*. Although given to what might be called the "Soap Opera—Modern" style of writing, Baker does succeed in portraying the pathos of the prospective parents for whom no infant is available; the dilemma of the pregnant woman who has agreed to give her baby up for adoption but changes her mind after birth; the pain and suffering of those who, because of a shortage of infants, are unable to adopt; the abuses attendant upon the "profiteering" and shoddy practices of the middleman, or "baby seller". But her understanding of the *causes* of the problems is deficient, and her policy recommendations are the *opposite* of what is needed. On the whole, therefore, her book is more of a hindrance than a help to those who would alleviate the suffering she documents.

Why, in fact, is there a shortage of infants available for adoption? Why is there a "baby black market"? Why are such shady characters involved in these transactions? And why is there a pattern of all-cash-no-receipts-given in baby "deals"?

The answer is simple. Governmental restrictions, prohibitions and price controls have created the problems which plague adoption. Specifically, the law decrees a zero price control: no payment from adoptive parent to biological parent is allowed. And this intervention is at the heart of the problem. It is responsible for the trauma and heartbreak which attend adoption in the United States today.

If the argument is difficult to endorse, the reason may lie in our emotions—our feeling, perhaps, that money and babies don't mix. Consider, then, what would happen if a zero price control were imposed on another commodity, one which does not engage any of our deep emotions. Take apples, for example. What would happen if a zero price control were imposed on them? Obviously the incentive to bring apples to market would be eroded. Farmers, forbidden to charge for their product on the legal market, would sell them elsewhere—or not at all. And no one would think the ensuing shortages of apples mysterious. No one would be surprised at the long lists of unsatisfied customers waiting for the few apples that were available. Or at the "unscrupulous" black market sellers who would violate the price control law and sell apples at high prices in the dead of night. Few people would blame the disturbance on greed, or profiteering. It would be clear to all that the cause was the law itself. So it is with babies, and with "black market" adoptions.

We can—and should—go even further. If there were no government intervention—no price controls—in the "baby market," prices there would have the same coordinating function they have in other markets. If, for example, the supply of babies exceeded the demand, prices would tend to fall.. As prices fell, the number of potential buyers would, of course, rise. Where would the process lead? Toward the point where the number of babies offered for adoption equalled the number that prospective parents wished to adopt.

What if—as is the case today—the demand for babies exceeded the supply? This too would be alleviated by a free and open "baby market." Even now, at a zero price, a certain number of adoptable infants become available each day. Imagine how many more might become available if they could legally be sold at a substantial price. Women who would not enter the market as suppliers at a zero price might enter an open market. Furthermore, if the price rose high enough, *some* women might become professional breeders. All in all, the supply of babies would tend to increase as the market value of babies increased.

In brief, then, the market place has a built-in mechanism for resolving dissatisfaction. It would work for babies just as well as it works for apples—if we allowed it to. But we don't. Instead, we seem to lose sight of basic economic principles when we start thinking about adoption. "Babies are not commodities," people say. They are *human beings*, who have *rights* that must be respected. They mustn't be thought of or dealt with as though they were apples!

Infants and apples *are* completely dissimilar with respect to political and moral values. But they are not dissimilar from an economic point of view. *Both* are subject to the laws of supply and demand.

Still, the notion of "selling" a baby is disturbing. It *sounds* wrong. It sounds like some form of slavery. Baker, in fact, makes the comparison time and time again. "More than 100 years after the abolition of slavery in this country," she says in one place, "its about time we stopped allowing children to be bought and sold" (implying that the latter is not altogether different from the former).

But it seems clear that the language is what disturbs us, not the facts. Baker's objection only reflects the confusion that the words create.

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For surely, allowing a price to be paid for the privilege of adopting an infant is not equivalent to *enslaving* that infant! The child adopted as a result of a payment would be legally indistinguishable from one adopted with no fee attached. It is simply not true, as Baker would have it, that if adoption payments were legalized, infants so involved would become slaves.

Aside from the implication about slavery, Baker's case against baby selling consists of a list of abuses which come about, she says, because the practice is not sufficiently proscribed by law. In fact, the abuses she cites are real. But they are due not to the absence of prohibitionary law. Rather, they are due to its *presence*. Profiteering, for example, is something that vexes Baker to no end. She bewails "pregnancy for profit" and "made-to-order" babies who net the middleman $40,000 to $50,000 and more. Though her argument is far from clear, she seems to champion the old ecclesiastical doctrine of a "just price." Thus, presumably basing her calculations on the costs the middleman must undergo, she suggests $500, or perhaps $750, as a proper, "legitimate" and "honest" fee.

But the "fair price" doctrine has long been outmoded—and Baker acknowledges this, at least implicitly. The cost of writing her book, for example, bears no relationship to the financial rewards she is likely to reap if it sells well. Just so, the cash outlay of the adoption middleman bears no relationship to the financial rewards he reaps—if he does well. True, his profits are huge. But that is not because he is greedy (most of us are greedy), but because what he does is illegal, and punishable by fines and jail sentences. If it were legal, the situation would be entirely different. For one thing, more people would enter the field. They would compete with one another for clients, and the fees these clients have to pay would fall. In addition, the pregnant woman herself would benefit. For brokers would have to compete for her patronage too. And she would undoubtedly use the services of the one who paid *her* the most.

As it stands however, the illegal baby broker earns his fee. For without him, the parties to the adoption would not even be able to find each other. Thus, in the absence of a free market, it is foolish to talk about "cutting out the middleman," or even trying to reduce his fee. Without him there would be no transaction at all.

At one point, Baker tries to imagine what would happen if "baby selling" were legal. To her, the results would be nothing short of horrible. A past master of the aphorism and verbal taunt, she castigates unprohibited adoptions with appellations such as "stud service", "piece of merchandise", "breeding animal", and "baby farm", and raises the spectre of artificial insemination as an everyday occurence.

It is time to call a halt to such scare tactics. Not by denying the facts, but by honestly accepting them, and renouncing instead whatever outmoded puritanical instincts stand in the way of such acceptance. If baby selling becomes legal, perhaps an industry dedicated to the "production" (if we can use that word) of human infants for adoption *will* arise. And if it does, perhaps it will be modeled on the only analogous industry in existence: the breeding of barnyard animals. If so, then "studs", "brood mares", "covering fees" and all the rest will come to have their equivalents in the market for humans. But this is not a *reductio ad absurdum* of the whole idea. For it is not absurd at all. The public will become accustomed to it, just as it has become accustomed to "horseless carriages", "woman nurses", "test tube babies", "contraception", "abortion", and "the germ theory of disease"—all of which were extremely disturbing, not to say "absurd" when first introduced. No one looks askance at a horse which serves the function of stud or brood mare. And given enough time, people would become accustomed to seeing human beings in these roles. The impropriety which now attaches to "baby production" flows from its illegality—not from anything intrinsic to baby production itself.

Baker also has some curious notions about "duress" and "coercion." In her view, it is coercive to demand repayment of expense money from a pregnant mother who refuses to go through with a contracted adoption. Given the psychologically confused and troubled times of the last months of pregnancy, Baker says, a woman's decision to give up her baby is necessarily "made under duress". Surely this is verbal overkill. Contracts voluntarily undertaken, even by people who are "young", "confused", "depressed" or "guilt-ridden" cannot, for those reasons, be unilaterally set aside, without recompense to the disappointed party. If a general rule were made of this dictum, it would spell the end of commerce as we know it for these people.

In any case, what Baker describes is not the result of anything intrinsic to the baby market, but rather of misbegotten government rules. For the donors in the illegal adoption market are almost all "amateurs", with all the innocence, instability, and ignorance implied by that word. Since the whole enterprise is illegal, contracts must be made informally: through a doctor, a nurse, a lawyer, the "lady down the street", etc. Thus those who might be best fitted to take part cannot, for the most part, be reached.

Were adoptions for pay legalized, more professionals and fewer amateurs would be involved. Unfit donors would quickly be weeded out; and since the industry would be under public scrutiny, at least initially, we might even expect a charitable policy toward pregnant women who changed their minds after signing contracts.

We have argued that profiteering, "breeding for pay", and requiring the fulfillment of contracts are not in themselves illegitimate. There are, however, a series of abuses in the present baby-selling market which are fully as bad as Baker says they are. These include not carefully checking or actually lying about the qualifications of prospective parents, concealing disease in the baby's background, allowing the baby to fall into the hands of child abusers and alcoholics, threatening violence against mothers who refuse to give up their babies for adoption, reneging on the deal by the adopters, and conflicts of interest on the part of the lawyer-middlemen, who represent all three parties to the transaction—the mother, the adoptive parents, and the baby. But though they are evil, these and other abuses are also *not* intrinsic to the baby-selling industry. They are present whenever and wherever the government prohibits or restricts the sale of that which citizens greatly desire, whether it be marijuana, alcohol, taxi medallions—or babies. The results are always the same: shortages develop, profit margins rise, and entreprenuers enter the field who do not mind taking the risk of possible jail sentences. These businessmen, whether they are called "pushers" or "bootleggers" or just "the underworld", have many things in common: experience with—and inclinations toward—force, fraud, extortion, murder, mayhem and evil. Their very presence gives a bad reputa-

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tion to any industries they are associated with. In fact, people tend to confuse the two and to assume that the industry is, in itself, immoral, though there are countless examples to the contrary. The best example, of course, is alcohol. When it was prohibited by law, it was a "criminal industry" replete with "stills", bootlegging, gun-fights and bribery. When the prohibitions were removed it became once again a "normal" industry. Four Roses does not, nowadays, raid, burn and loot the premises of Johnny Walker or Schenly.

No less can be expected of baby-selling. If and when it becomes legal, established firms will supplant fly-by-night operators. Cash-only deals in empty parking lots in the dead of night will give way to more traditional—and more responsible—business procedures. While fraud, violence, concealment and lies cannot be expected to disappear entirely, they will be no more prevalent in baby-selling than they are in any other field. There is no place this side of heaven where all such abuses are absent, but there is no reason to expect that the baby-selling industry will fall short of the levels of business propriety currently in operation elsewhere.

Finally, and most important of all, there is Baker's claim that baby selling is *sui generis*, and that in this area *all* participants lose out. Baby selling, she claims, is not a victimless crime; on the contrary, everyone involved in it is a victim. Says Baker: "Everybody involved in a black market adoption—the natural parents, the adoptive parents, and, most of all, the baby—stands to lose. Everybody, that is, except the baby broker, who just gets richer and richer."

Thus Baker dismisses a basic postulate of economics: that *all* trades (in the *ex ante* sense of expectations) are viewed as mutually beneficial by the parties involved. If they were not, one or both parties would refuse to participate. True, in the *ex post* sense, one or both may come to *regret* their decision; but this does not contradict the premise that all people always expect to gain from their trades *at the time that they make them*. If I give you my bicycle in return for your radio, I must value your radio more than my bicycle; and you, if you have voluntarily entered the trade, must prefer my bicycle to your radio.

This point is so well established, and so basic to economics, that even Baker herself, in an entirely different connection, quotes someone in its support. In Chapter Five, which asks: "Why doesn't somebody do something about the sleazy practice of baby selling for profit?" Baker points to the difficulties of mobilizing wit-

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VOLUME I NUMBER I A PUBLICATION OF THE CATO INSTITUTE JANUARY 1979
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nesses against the baby seller. She cites Donald Score, chief of the Operations Support Unit for the California State Department of Health, who states: "The natural mother is happy and doesn't want to talk about the experience because she doesn't want to be exposed as having had an illegitimate child. The adoptive parents are happy because they now have a child and it's apparently the quickest way—or the only way—they could get a child. And obviously the conduit (baby-seller) who makes money on the transaction is not about to talk because he could get himself in terrible trouble." This is hardly a picture of oppression on all sides. Nevertheless, Baker plunges ahead with descriptions of the "victims".

Citing New York City District Attorney Joseph Morello, Baker points first to the natural mother. Usually an impoverished, unsophisticated teen-aged girl, she is said to be "taken advantage of", and "victimized."

We may sympathize with the young woman's plight. But when she is said to be "victimized," we must ask: How? And by whom? Her plight may be the fault of the errant father of the child, her own parents, her lack of a "moral" upbringing, or any number of other factors. But surely the baby seller and the adoptive parents cannot be held responsible, since when the girl approaches them she is *already* in a state of misfortune!

No. In order to make an accurate assessment, we must take the natural mother's unenviable plight as a *given*. Then we must ask: will she be made better off or worse off by voluntarily entering into an agreement to give her baby up for adoption in return for, say, room and board for the last few months of her pregnancy, plus a few hundred dollars? As we have seen, in the natural mother's own estimation, the agreement will leave her better off. If she did not think so, she would not enter into it. If *she* is considered a victim, then so must every other person who makes a trade in impecunious or otherwise troubled circumstances. And if baby-selling is declared illegal on this ground, then consistency demands that all "poor", "unsophisticated", or "troubled" people be prohibited from making any commercial arrangement for themselves. Such is the *reductio ad absurdum* of holding the natural mother as a victim.

What about the adoptive parents then? Are they "victimized" by the transaction? Desperate for a child, unable to get one because they fall afoul of the establishment adoption agency's rules concerning age, income, religion, or any one of a host of other requirements, and, because birth control pills have virtually dried up the supply of babies, the clients of the baby-seller positively *treasure* the infant. Nothing else can be deduced from their willingness to pay up to $50,000—and in some cases, even more—for the privilege of adoption. It is only perverse logic of the most extreme kind that can consider such people "victims" of the "black market." "Beneficiaries, who have seen their most fervent wish come true," would be much more accurate.

What about adoptive parents who have been placed on agency waiting lists but will not receive a baby because it was taken up by the black market? Baker sees this as a particular crime against the poor, because, in the words of Morello, "This racket says, 'Here is the economic breakpoint. If you have more than that, we can start dealing, but if you don't, good-bye, we don't want to talk to you'".

But on this interpretation, the very *price system* itself is a "plot" against the poor. Only if no prices are charged for *anything*, and if goods are distributed in some way invariant to income will the poor be in the same position as everyone else. But of course, that "position" would be a terrible one. For without the price system, the economy, and society itself, would grind to a halt. *Most* people on earth, the poor included, owe their very lives to its existence. And it alone, by providing the incentive to create a baby-producing industry, can end the "baby shortage", which is at the heart of the problem.

The courts, and the police too, are sometimes seen as victims of black market baby selling. For when a great deal of money is made by disobeying a law, part of it is likely to be funneled toward the executive and judiciary branches of government, thus corrupting them. This happened commonly during alcohol prohibiton and it occurs today in the illicit drug market. So far, there is little evidence of it in the baby-selling market. But it is certainly a possibility. And if it occurred, the government would be harmed. But would it be a victim? No. To turn the old adage around: in this case the government would be more sinning than sinned against. For it is the creator of the malignant legislation which is responsible for the problem in the first place.

Finally, let's turn to the infant itself. Says Baker: "Black market adoptions [are] transactions in which money, not the child's welfare, is the paramount factor." "The original selection of the adoptive parents is not being made either by the natural mother or by an agency but by somebody who wants to know only the color of the adoptive parent's money." In contrast, while the state's representation of the "three days old infant's" rights are "[imperfect] mechanisms", the baby at least "deserves to have those mechanisms invoked and applied."

This is an important argument and one which at first glance may seem difficult to rebut. Can we show that free market operation will result in better protection for the baby than governmentally regulated operations? It seems that we can. For the regulated adoption agencies leave much to be desired. Baker herself tells us that "The courts, too often, see their function in any kind of independent adoption as merely rubber-stamping applications. There was almost never any close scrutiny of parents, attorney, or child." She even cites one "California case where the judge approved an adoption *after the social worker had supplied him with proof that the adoptive parents had physically abused the infant*" (emphasis added). And although Baker spends the last 30 pages of her book informing readers about legitimate adoption agencies (presumably so that the evil black market might be avoided), she quotes one agency source as follows:

> I visited agencies where case records of children were kept in cardboard boxes in the hallways, and there were records on "children" twenty-five and twenty-six years old who were married and raising families of their own, but whom the system still listed as kids. The situation is tragic in that we cannot estimate how many children need permanent homes for adoption because of the lack of administrative and recording systems within the agency which will keep track of these children.

So much for the operations. What about the rules themselves, which are supposed to safeguard the infant's welfare? There are a whole host of them—racial, ethnic, religious, medical, and others, imposed by the "responsible" statist adoption agencies. But almost everyone who studies them calls them "arbitrary" and "unfair". They do little to weed out unfit parents. Rather, they seem designed to satisfy the personal likes and dislikes of various bureaucrats.

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Market agencies need do little to improve upon this sorry record. But improve upon it they undoubtedly would. For they would be dependent on voluntary contributions from satisfied clients. They could be forced into bankruptcy if they failed to act in accordance with the preferences and wishes of the general public. For example, if a *free market* agency placed infants with child beaters, it would soon go out of business—a fate which judges and public agencies need not fear. Public outrage and revulsion can erode the valuable brand-name capital of the former; it is impotent in the latter case. In addition, once adoption became a "free enterprise" endeavor, Nader-type groups would almost certainly be formed to serve as watchdogs. And since profit-oriented firms are dependent upon goodwill and public acceptance, the watchdog groups would have a great deal of power over them—much more than they will ever have over courts and social work agencies.

Such is the case for the legalization of baby selling. It is a good case, and a strong one. But perhaps libertarians will wish to hold back. They may think that it's too radical, too far out; they may fear that an endorsement would retard the popularity of the movement with nonlibertarians. They can take heart, then, from the stirring example set before them by none other than Phyllis Schlafly, hardly an outspoken extreme libertarian, who last year, in *support* of the decriminalization of baby selling, said: "What's so wrong about that? If I hadn't been blessed with babies of my own, I would have been happy to have paid thousands of dollars for a baby."

Where the conservative Schlafly goes, can libertarians fear to tread?

Walter Block, who teaches economics at Rutgers, is the author of *Defending the Undefendable.*

Taking the constitution seriously

JOAN KENNEDY TAYLOR

Government by Judiciary: The Transformation of the Fourteenth Amendment, *by Raoul Berger. Harvard University Press, 483 pp. $15.00*

RAOUL BERGER IS A Harvard-based expert on American constitutional law who became a celebrity when he wrote books on *Executive Privilege* (1973) and *Impeachment* (1974) which contained exactly the scholarly constitutional positions on those subjects that anti-Nixon liberals wanted to hear. Now, in *Government by Judiciary*, he has caught many of his former admirers off-base—what are they (and we) to do with a book which attacks as unconstitutional most of what he calls the "libertarian" (meaning *civil libertarian*) decisions under the Fourteenth Amendment that have given American society many of the freedoms it has today?

Even among conservatives, is there anyone out there who wishes to return to the states the power to mandate segregation, ban the sale or use of contraceptives, exclude blacks from political primaries, or regulate the press? Dr. Berger is himself a liberal, but he claims that the decisions that ended such practices are open to the charge that the Court "has encroached on the sovereignty reserved to the States by the Tenth Amendment" and that the end does not justify the means. It is the state legislatures, either singly or through the amendment process, that were constitutionally given sole power over such areas, in his view, and for the Court to interfere with legislative acts is a usurpation of power.

Berger puts his basic thesis as follows:

> Substitution by the Court of its own value choices for those embodied in the Constitution violates the basic principle of government by consent of the governed. We must therefore reject, I submit, Charles Evans Hughes's dictum that "the Constitution is what the Supreme Court says it is." No power to revise the Constitution under the guise of "interpretation" was conferred on the Court . . .
>
> I assert the right to look at the Constitution itself, stripped of judicial incrustations, as the index of constitutional law and to affirm that the Supreme Court has no authority to substitute an "unwritten Constitution" for the written Constitution the Founders gave us and the people ratified.

This view is generally called one of "strict construction," and is often held by people whose conservative social philosophy Dr. Berger despises. "My friends inquire," he writes, "whether I am not troubled to find myself in such company." Those who admired the Warren Court because they agreed with the results of its decisions, he warns, are now being penalized for their lack of constitutional principle. "Already there are anguished outcries that the Berger Court is 'acting against the law.' But the name of the game is 'Two Can Play'; once the legitimacy of judicial policymaking is recognized, new appointees may properly carry out the policies which they were appointed to effectuate."

The section of the Constitution which Dr. Berger looks at in this book is the Fourteenth Amendment, primarily Section one, which reads:

> All persons born or naturalized in the United States . . . are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

What makes these words so important in the history of the Constitution is that they comprise the first section of the federal document that purports to set any restraint on the actions of *state* governments—the first ten amendments (the Bill of Rights) having been adopted as limitations only on federal power. The fifth section of the Fourteenth Amendment gives Congress the power to enforce the Amendment by appropriate legislation. The questions that *Government by Judiciary* sets out to answer are: What restraints were intended? and Was the Supreme Court also intended to enforce these restraints?

To find the answer to these questions, Dr. Berger gives us a heavily annotated analysis of the debates in the 39th Congress over the texts of the Fourteenth Amendment and of the Civil Rights Act of 1866, passed earlier in the same session. This was an act passed to protect certain rights of the newly freed slaves from Black Codes passed by southern states, and it is generally agreed that one of the main purposes of the Fourteenth Amendment was to make sure the Act was constitutionally valid.

Berger finds evidence for the thesis that power over segregation was intended to be reserved to the states (contrary to the Warren Court decision in 1954 in *Brown* v. *Board of Education*, which desegregated public schools) as was power to set voting districts and qualifications for voting (contrary to the

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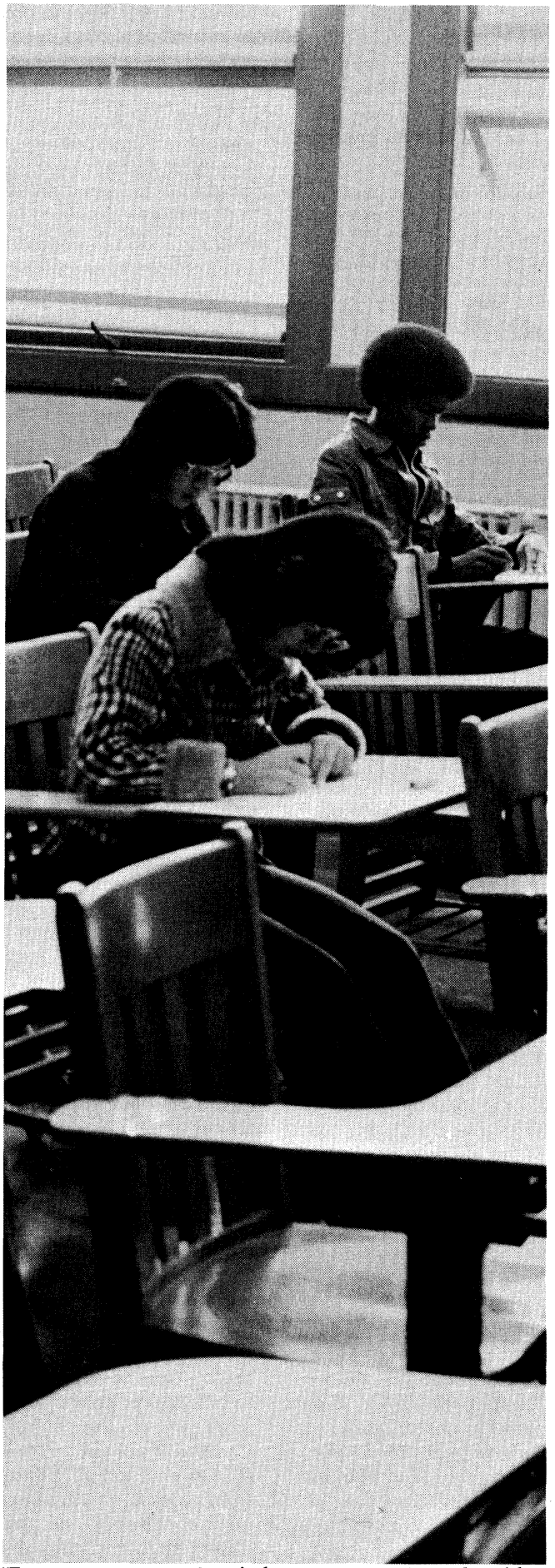

MARSHALL E. SCHWARTZ

"Even among conservatives, is there anyone out there who wishes to return to the states the power to mandate segregation?"

Warren Court decision in 1965 in *Reynolds* v. *Sims*, which mandated reapportionment of state legislatures). He goes further back, to attack the Court's practice in the last quarter of the nineteenth century of interpreting the words "due process of law" as giving the Court the power to invalidate state regulation of business, thus in his view totally misinterpreting the intentions of the Amendment's framers. He writes: "The extraordinary transformation of due process by the Court has turned the Fourteenth Amendment topsy-turvy. The original design was to make the "privileges or immunities" clause the pivotal provision in order to shield the "fundamental rights enumerated in the Civil Rights Act from the Black Codes."

So far, libertarians interested in law may feel that they agree with Berger. As long ago as 1960, when *The Constitution of Liberty* was first published, F.A. Hayek was telling us not only that the Justices "at first deprived themselves of one weapon which the Fourteenth Amendment might have provided [the privileges and immunities clause]," but also that

> the "due process" provision of the amendment repeats with explicit reference to state legislation what the Fifth Amendment had already provided and several state constitutions similarly stated. In general, the Supreme Court had interpreted the earlier provision according to what was undoubtedly its original meaning of "due process for the enforcement of law." But in the last quarter of the century, when it had, on the one hand, become unquestioned doctrine that only the letter of the Constitution could justify the Court's declaring a law unconstitutional, and when, on the other hand, it was faced with more and more legislation which seemed contrary to the spirit of the Constitution, it clutched at that straw and interpreted the procedural as a substantive rule . . .
>
> . . . Few people will regard as satisfactory the situation that has emerged. Under so vague an authority the Court was invariably led to adjudicate, not on whether a particular law went beyond the specific power conferred on the legislatures, or whether legislation infringed general principles, written or unwritten, which the Constitution had been intended to uphold, but whether the ends for which the legislature used its powers were desirable. The problem became one of whether the purposes for which powers were exercised were "reasonable" or, in other words, whether the need in the particular instance was great enough to justify the use of certain powers, though in other instances there might not be justification. The Court was clearly overstepping its proper judicial functions and arrogating what amounted to legislative powers.

If anything, time has intensified the problem which Hayek describes, as witness for example the recent *Bakke* decision of the Supreme Court, which rested finally on an analysis of whether the University of California had a purpose "substantial enough" to justify a racial quota. But Berger would not agree with Hayek that the cure for the problem is to return to general principles, "written or unwritten." Rather, his is a literalism so pronounced that he would deny the Supreme Court the traditional power of judicial review, and restrict the rights protected by the Fourteenth Amendment to those *enumerated* in the Civil Rights Act of 1866: "the right to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property." Further, even these rights should in

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"What are we to do with a book which attacks as unconstitutional most of what Berger calls the 'libertarian' decisions that have given American society many of the freedoms it has today?"

his opinion have been protected by federal legislation, not by Supreme Court action. He concludes: "In the history of the Fourteenth Amendment, it may confidently be stated, there is not a glimmering of intention to authorize judges to enforce rights beyond those enumerated in the Civil Rights Act. Far from endowing the judiciary with a broad power to enforce 'natural rights' going beyond those so enumerated, the courts were pointedly omitted from the Sec. 5 power to enforce even the rights granted by Sec. 1." (This last sentence refers to a Section of the Fourteenth Amendment which gave to Congress "the power to enforce by appropriate legislation" the provisions of the Amendment.)

Not all strict constructionists, it must be pointed out, agree on how to construe constitutional history. The late Justice Hugo Black considered himself to be a strict constructionist, yet he believed that history showed the Bill of Rights to be intended as absolute prohibitions on the federal government which were applied by the Fourteenth Amendments to state governments. It is this idea, among others, that Dr. Berger intends to refute in this book, but to my mind the conclusion that the rights intended to be protected by the Fourteenth Amendment were enumerated in the Civil Rights Act of 1866 by a Congress anxious to preserve state prerogatives does not necessarily follow from the historical evidence he cites to support it. Many of the passages he quotes could equally support the view that the "privileges or immunities of citizens" were not enumerated in the Amendment, *not* because they had previously been enumerated in the Civil Rights Act, but because it was still generally considered that everyone knew what they were. And it is by no means as clear as Dr. Berger suggests whether the states were to retain total control of segregation and suffrage. The Union had just won a war against the leading exponents of states' rights, and the argument that the legislation that Congress proceeded to pass in the next few years is a good indication of what it intended to be the "privileges or immunities" of citizenship seems at least equally warranted. This contrary conclusion was argued by Judge Loren Miller in his 1966 book, *The Petitioners: The Story of the Supreme Court of the United States and the Negro:*

> Immediately after the Civil War, Congress demonstrated what it meant by "appropriate legislation" by enacting a series of laws that ran the gamut from protecting the Negro's right to contract and purchase, lease, hold, inherit and convey real property to guaranteeing him the vote, full and equal accommodations in inns, public conveyances on land and water, theaters and other places of public accommodation and amusement. It prescribed heavy penalties for persons who interfered with the Negro's exercise of almost every conceivable civil right.
>
> If left untouched, and enforced, those statutes would have eliminated the necessity, indeed, the very possibility, of most of the Supreme Court's highly praised (and roundly condemned) civil rights decisions. They were neither left untouched nor enforced because they ran afoul of the Supreme Court's notions of what the Constitution permitted the legislative and executive branches of the federal government to do by way of protection of civil rights and its own appraisal of its supremacy as an interpreter of the Constitution.

Here is an argument very like Dr. Berger's, one which holds that the Supreme Court has usurped power from the legislative

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branch of government, and that we must re-examine the intentions of the framers of the Fourteenth Amendment to discover where things went wrong. But Judge Miller's historical analysis leads to a conclusion opposite to Dr. Berger's, that the decision in *Brown* v. *Board of Education* signified a belated return to the intention of the Amendment, not a departure from it. Strict construction of the Constitution is a *method*, and a method which we should adopt. Dr. Berger is right there. But even if it is impeccably applied, the results of the method are not guaranteed to be libertarian: the *Dred Scott* decision that found that the Negro "has no rights which the white man is bound to respect" was, at least in part, a strict-construction decision.

How then should we evaluate this book? Libertarians want to see government limited, and will therefore be disposed to welcome the thesis which suggests not only that the Supreme Court is (and has been) acting unconstitutionally, but that the remedy for this is not only the amendment process but impeachment. On the other hand, libertarians believe in natural rights and in what nineteenth-century abolitionists called a "higher law"—which Dr. Berger says is the principle in the name of which the Supreme Court has usually violated the Constitution. He puts an unacceptable set of alternatives squarely before us—should our government be limited only by the letter of the Constitution, amended to express the will of the people, whatever it may be? Or do we want what has been called a "living Constitution" which changes with the times and the moral convictions of the members of the Court, and "is what the Supreme Court says it is"? The first approach brought us Prohibition and the income tax Amendment; the second brought us school busing. Neither view seems to protect the individual from the aggrandisement of government power.

It is the tendency which the Supreme Court has to nullify acts of the legislature—that is, the "will of the people"—which Dr. Berger sees as the essence of "government by judiciary." He describes "this development—whereby courts substitute their own view of policy for those of legislative bodies," as a "shift from judicial supervision of procedure *in the courts* to control of legislative policymaking." He finds this process especially disturbing when it is done by referring to the spirit rather than to the letter of the Constitution.

But it is precisely this attitude—that "the will of the people" is expressed by the legislature—which has led to what the late Bruno Leoni called "the inflation of the legislative process in contemporary society." Like the contemporary legislators of whom Professor Leoni spoke in his book *Freedom and the Law*, Dr. Berger seems "to think that legislation is always good in itself." If one takes such a view of the acts of legislatures, then one may indeed come to the astonishing conclusion, as Dr. Berger does, that invalidating a law because it interferes with an unenumerated right of privacy, as the Supreme Court did in the contraceptive case, *Griswold* v. *Connecticut*, is an act of usurpation of power—i.e., tyranny.

Such an argument overlooks entirely the significance of the constitutional debates over the Bill of Rights, and the fear that rights would be lost by enumerating them, which led to the adoption of the Ninth Amendment. Hayek explains in *The Constitution of Liberty* the development which led to the growth of arguments such as Dr. Berger's: " . . . [g]radually, as the ideal of popular sovereignty grew in influence, what the opponents of an explicit enumeration of protected rights had feared happened: it became accepted doctrine that the courts are not at liberty 'to declare an act void because in their opinion it is opposed to a spirit supposed to pervade the constitution *but not expressed in words*.' The meaning of the Ninth Amendment was forgotten and seems to have remained forgotten ever since."

Dr. Berger wants to limit what he sees as usurpation of power, saying, "I cannot subscribe to the theory that America needs a savior, whether in the shape of a President or of nine—oftimes only five—Platonic Guardians." But he would preserve the unlimited power of legislatures to do anything that is not strictly and specifically forbidden. To the extent that he would allow such almost unlimited power to the will of the majority, whatever it may be, and to the extent that he would not recognize a Supreme Court power to interfere with the "right" of the States to violate individual rights, libertarians must realize that the view he presents is not really one of strict construction—that, as Hayek puts it, "the aim of the Constitution was largely to restrain legislatures."

Joan Kennedy Taylor is an Associate Editor of LR.

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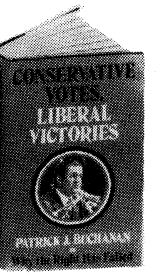

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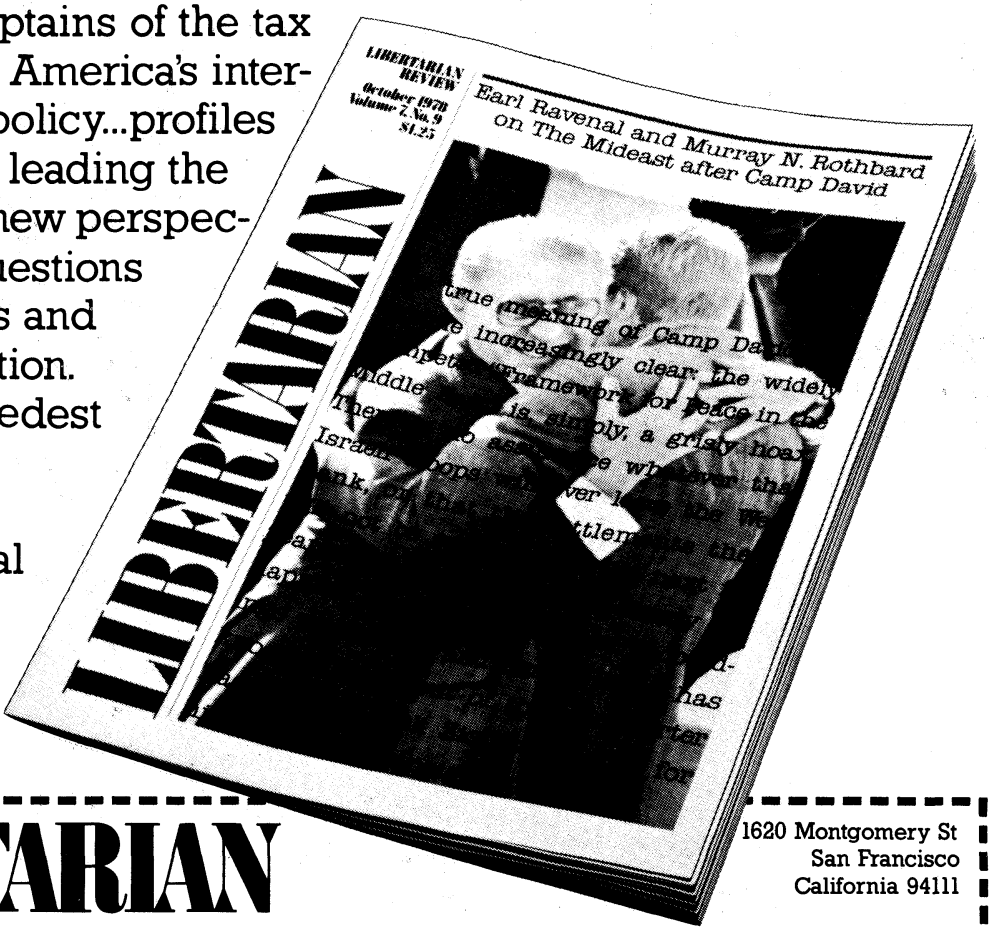

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